

C O N F I D E N T I A L

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1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

3 - - - - -

4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown

14 & Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.,

19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22 DEPOSITION OF HELMUT R. R. WAKEHAM

23 Volume I, Pages 1 - 205

24

25

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1           (The following is the deposition of HELMUT  
2 R. R. WAKEHAM, taken pursuant to subpoena, at the  
3 offices of Robins, Kaplan, Miller & Ciresi, 1801 K  
4 Street N.W., Washington, D.C., commencing at  
5 approximately 9:32 o'clock a.m., May 29, 1997.

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I N D E X

EXHIBITS	DESCRIPTION	PAGE MARKED
128	PM R&D organization chart, Bates 1003203975-93	9
129	PM Research Center Evaluation Report, Bates 1000335612-25	24
130	Memo dated February 25, 1964, Wakeham to Cullman, Bates 1001885146	53
131	Operations Department Presentation to PM Board of Directors dated October 28, 1964, Bates 1000307159-64	55
132	Memo dated November 20, 1964, Wakeham to Smith, Bates 1001884878	72
133	Memo dated January 19, 1965, Murrill to Wakeham, Bates 1000039811-5	75
134	Memo dated November 15, 1968, Wakeham to Goldsmith, Bates 1000039670-3	79

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1	135	"NEED FOR BIOLOGICAL RESEARCH	
2		BY PHILIP MORRIS RESEARCH AND	
3		DEVELOPMENT," Bates	
4		001607055-61	88
5	136	Memo dated October 3, 1969,	
6		Carpenter to Wakeham,	
7		Bates 1000220888-91	93
8	137	Memo dated December 15,	
9		1969, Weissbecker to Carpenter,	
10		Bates 1001882748-9	96
11	138	Memo dated September 9,	
12		1969, Wakeham to Goldsmith,	
13		Bates 1000855768-70	102
14	139	Memo dated February 24,	
15		1970, Cullman to Wakeham,	
16		Bates 1000216742	106
17	140	Meeting notes dated 10th	
18		September 1970, Bates	
19		110315968-71	117
20	141	Memo dated March 7, 1968,	
21		Wakeham to Goldsmith,	
22		Bates 1001818588-93	133
23	142	Memo dated October 14,	
24		1969, Wakeham to Millhiser,	
25		Bates 1001609594-5	138

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1	143	Memo dated November 12,	
2		1971, Saleeby to Wakeham,	
3		Bates 1000255276-8	144
4	144	Memo dated December 8,	
5		1970, Wakeham to Cullman,	
6		Bates 2022200161-3	148
7	145	Memo dated April 7, 1970,	
8		Wakeham to Goldsmith,	
9		Bates 2022244451-3	161
10	146	Memo dated May 23, 1969,	
11		Johnston to Seligman,	
12		Bates 1000306237-9	167
13	147	Letter dated January 4, 1971,	
14		Wakeham to Lazarsfeld,	
15		Bates 1000719422-3	170
16	148	Memo dated May 21, 1975,	
17		Johnston to Seligman,	
18		Bates 1003285497-502	171
19	149	Memo dated August 17, 1970,	
20		Dunn to Wakeham, Bates	
21		1003285479-83	173
22	150	Memo dated September 22,	
23		1959, Wakeham to Roper,	
24		Bates 1005039423-4	175
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1 151 Memo dated March 24, 1961,  
2 Wakeham to Cullman, Bates  
3 1000861953 177  
4 152 PM "Tobacco and Health-R&D  
5 Approach" on November 15,  
6 1961, Bates 1000277423-47 178  
7 153 Memo dated Febraury 5th,  
8 1962, Cullman to Wakeham,  
9 Bates 22022241517-8 179  
10 154 Memo dated February 8,  
11 1962, Blackmore to Bavley,  
12 Bates 1001885988 181  
13 155 Memo dated June 7, 1965,  
14 Staley to Mason, Bates  
15 1001600537-8 182  
16 156 Memo dated February 19,  
17 1969, Dunn to Wakeham, Bates  
18 1003289921-2 184  
19 157 "Smoker Psychology Research"  
20 presented November 26, 1969,  
21 Bates 1000273741-71 186  
22  
23  
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25

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1 P R O C E E D I N G S

2 (Plaintiffs' Exhibit 128 was  
3 marked for identification.)

4 (Witness sworn.)

5 HELMUT R. R. WAKEHAM

6 called as a witness, being first duly  
7 sworn, was examined and testified as  
8 follows:

9 ADVERSE EXAMINATION

10 BY MR. GORDON:

11 Q. Could you state your full name for the record,  
12 please.

13 MR. NUNLEY: Corey, I'm sorry. Excuse me.  
14 I just want to make sure. Do we have the same  
15 confidentiality agreement --

16 MR. SANDMAN: Yes, you do.

17 MR. NUNLEY: And this is just for the  
18 record: The 30 days' designation that runs under the  
19 Minnesota protective order, the Arch plaintiffs have  
20 agreed will run under their case in terms of giving  
21 the defendants, or the plaintiffs for that matter, 30  
22 days to designate confidentiality.

23 Thank you.

24 MR. WEIL: One other housekeeping matter.  
25 This is Jeff Weil representing Philip Morris in the

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1 Arch case. Since this deposition has been  
2 cross-noticed in Arch, I wonder if I could have an  
3 agreement with Mr. Sandman that instead of saying "Me  
4 too" to every objection that Mr. Silbert might make  
5 to a question, I join any objection that he makes  
6 unless I expressly state otherwise?

7 MR. GORDON: That's actually governed by  
8 the protective order and the Case Management Order  
9 governing this case. Other counsel are in effect  
10 instructed not to join in objections. They are all  
11 preserved.

12 MR. NUNLEY: He's doing it for purposes of  
13 Arch.

14 MR. WEIL: Is that all right with you?

15 MR. SANDMAN: That's fine, yes.

16 MR. WEIL: Thank you.

17 BY MR. GORDON:

18 Q. Start that again.

19 Could you state your full name for the record,  
20 please.

21 A. My name is Helmut R. R. Wakeham.

22 Q. Do you have a Ph.D., sir?

23 A. Yes, sir.

24 Q. I'm going to refer to you as "Dr. Wakeham." Is  
25 that acceptable?

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1 A. Yes.

2 Q. Okay. Good morning, Dr. Wakeham.

3 A. Good morning.

4 Q. My name is Corey Gordon. I'm an attorney  
5 representing the State of Minnesota and Blue Cross  
6 Blue Shield of Minnesota in a case now pending where  
7 State of Minnesota and Blue Cross are plaintiffs  
8 against Philip Morris and other defendants. The case  
9 is now pending in Ramsey County District Court in  
10 Minnesota. And we're here to take your -- take your  
11 deposition in connection with that case, and you --

12 Do you understand, sir, that this deposition and  
13 the videotape that's being made today will be played  
14 to the jury in St. Paul at the time of trial?

15 A. Yes.

16 Q. And you're appearing today under subpoena; is  
17 that correct?

18 A. Yes.

19 Q. Okay. And you are represented here by your own  
20 counsel; is that correct?

21 A. Yes.

22 Q. In fact you have two lawyers representing --

23 A. Yes.

24 Q. -- you personally; is that --

25 A. Yes.

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1 Q. Okay. And they're --

2 Both these lawyers that are representing you  
3 today are being paid by Philip Morris; is that  
4 correct?

5 A. Yes.

6 Q. And you are currently a paid consultant to  
7 Philip Morris; is that correct?

8 A. Yes.

9 Q. You're on an annual retainer of some sort?

10 A. Yes.

11 Q. When did you first -- well strike that.

12 At some point in time you were an employee of  
13 Philip Morris; is that correct?

14 A. Yes.

15 Q. When did you first become an employee of Philip  
16 Morris?

17 A. In 1958.

18 Q. And what was your first position with Philip  
19 Morris?

20 A. I was a technical assistant to the executive  
21 vice-president for operations and subsidiaries.

22 Q. How long did you hold that title?

23 A. About one year.

24 Q. Then what happened? What was your next  
25 position?

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1 A. Then I was transferred to become the -- in  
2 charge of research and development --

3 Q. Did you have a title?

4 A. -- in Richmond.

5 Yes. I was director of research and  
6 development.

7 Q. And how long did you hold that position?

8 A. Well I was in that position until January 1,  
9 1976. I was made a vice-president in 1962 or '3, so  
10 I had the title of vice-president research and  
11 development.

12 Q. You were --

13 I just want to clear this up. From 1959 to 1962  
14 your title was director of research and development?

15 A. Yes.

16 Q. And then in 1962 you became vice-president --

17 A. Yes.

18 Q. -- for research and development.

19 A. Yes.

20 Q. And how long did you hold that position?

21 A. The entire period between 1962 and 1976.

22 Q. And what happened in 1976?

23 A. Well in 1976 I became a staff vice-president in  
24 the corporation with the title of vice-president  
25 Philip Morris U.S.A. and chief scientist, but my -- I

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1 was totally separated from the operational functions  
2 of the research department and in effect carried out  
3 special staff projects for the management of the  
4 corporation.

5 Q. How long did you hold that position?

6 A. Until February 1982.

7 Q. Was there a point in time where your title was  
8 corporate vice-president and vice-president science  
9 and technology?

10 A. I suppose so. There were several  
11 reorganizations that took place during the period,  
12 and I had different titles at different times.

13 Q. I'm just trying to get a sense of -- of the  
14 responsibilities.

15 Let me show you Exhibit 128, and this is an  
16 organizational chart -- a portion of an  
17 organizational chart produced by Philip Morris. Now  
18 according to this, in 1980 your title was corporate  
19 vice-president and vice-president science and  
20 technology. Does that comport with your  
21 recollection?

22 A. Yes. Well this is in 1980?

23 Q. That's what it says on the document.

24 A. Yes. All right. Okay.

25 During the -- after the period of 1976 -- well

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1 beginning -- yeah. They organized a function which  
2 emphasized the area of technology transfer, and I  
3 forget right now the -- the actual title of the  
4 group, but I was assigned into that group even though  
5 I still held -- had an office over in the research  
6 department.

7 Q. To whom did you answer at -- in -- starting  
8 1976?

9 A. At the beginning I answered to Mr. Clifford  
10 Goldsmith, and then later on I was working with Mr.  
11 Ben Soyars, who I believe was the president of this  
12 group. And the name I have forgotten at this point.

13 Q. What happened in 1982?

14 A. I retired.

15 Q. And at what point did you become a consultant to  
16 Philip Morris?

17 A. I became a consultant upon retirement.

18 Q. And have you been a consultant continuously  
19 since then?

20 A. There may have been a gap, a year or so, but  
21 I -- as far as I know, it was continuous.

22 Q. What --

23 A. There -- there was a time when one contract ran  
24 out and there was a little period when -- before they  
25 renewed it.

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1 Q. And what did --

2 What are your current areas of consultation with  
3 Philip Morris?

4 A. Well I'm on a retainer, on call. I devote maybe  
5 half a dozen days a year working with various people  
6 in the research and legal departments as they  
7 question me or ask me to come.

8 Q. So the --

9 It's primarily in the area -- still in the area  
10 of research and development?

11 A. No, I think most of the work now has to do with  
12 interpretation of documents which I wrote back in the  
13 early days.

14 Q. Interpret -- I'm sorry.

15 A. Back in the early days when I was vice-president  
16 R&D.

17 Q. For whom were you interpreting these documents?

18 A. The legal department.

19 Q. So your primary activities currently for Philip  
20 Morris consist of going over documents that you  
21 authored back when you were an employee of Philip  
22 Morris --

23 A. Yes.

24 Q. -- for purposes of assisting the legal  
25 department of Philip Morris.

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1 A. Yes.

2 MR. GORDON: Okay. Excuse me, I need to --

3 I see some other --

4 THE WITNESS: Go right ahead.

5 MR. GORDON: -- people just enter the room

6 that I don't think the court reporter or I -- or I

7 recognize.

8 MS. HENDRICKSON: I am Sue Hendrickson from

9 Arnold & Porter.

10 MR. GORDON: Who -- who do you represent?

11 MS. HENDRICKSON: Philip Morris.

12 MR. GORDON: In what case?

13 MR. NUNLEY: Minnesota case.

14 MS. HENDRICKSON: Minnesota.

15 MR. GROSSI: Peter Grossi from Arnold &

16 Porter.

17 MR. MAUNEY: Duane Mauney from Arnold &

18 Porter.

19 MR. GORDON: So -- I'm just curious -- we

20 have is, two, three, four, five, five Philip Morris

21 lawyers here in addition to Mr. Wakeham's two private

22 counsel. Okay?

23 MR. NUNLEY: Yeah. Just a reflection,

24 Corey, I've extold your virtues as a deposition taker

25 and since they were going to be in town, they would

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1 want to come see you.

2 BY MR. GORDON:

3 Q. Okay, let's go -- go back.

4 Who was the director of research and development  
5 in 1958 when you started?

6 MR. NUNLEY: Corey, we got a new entrant.

7 MR. GORDON: Another one. Another Philip  
8 Morris lawyer?

9 MR. FALKENSTEIN: My apologies.

10 MR. GORDON: Hmm?

11 MR. FALKENSTEIN: I apologize.

12 MR. GORDON: I'm just kind of keeping  
13 count. Are you a Philip Morris lawyer?

14 MR. FALKENSTEIN: No, no, I'm with CTR,  
15 Eric Falkenstein from Debevoise & Plimpton.

16 MR. GORDON: Ah.

17 (Discussion off the stenographic record.)

18 THE REPORTER: There's a pending question.

19 MR. GORDON: Yes. Do you remember the  
20 question, Dr. Wakeham?

21 MR. SILBERT: Please repeat it.

22 Q. Who was the director of research in 1958?

23 A. Robert N. Dupis, D-u-p-i-s.

24 Q. I mostly wanted to hear how it was pronounced.  
25 I've seen it.

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- 1           And you replaced him in 1959?
- 2   A.    Yes.
- 3   Q.    Did he retire at that point?
- 4   A.    He left to go to become the vice-president of
- 5   R&D for General Foods.
- 6   Q.    Was General Foods part of Philip Morris at that
- 7   point?
- 8   A.    No.
- 9   Q.    When did Philip Morris purchase General Foods?
- 10  A.    I don't know the exact date.
- 11  Q.    Was it --
- 12  A.    It was after I retired.
- 13  Q.    Oh.
- 14  A.    Or about the time I retired.
- 15  Q.    Okay.
- 16  A.    Sometime in that period.
- 17  Q.    Okay. In 1962 when you became vice-president
- 18  for R&D, who did you -- who were you succeeding? In
- 19  other words, who was the vice-president of R&D?
- 20  A.    There was no vice-president for a period. I was
- 21  reporting still to Mr. Robert Roper, who was the
- 22  executive vice-president subsidiaries and operations.
- 23  Q.    Did Robert Roper have a nickname?
- 24  A.    Yeah. Bob.
- 25  Q.    Bob. Okay.

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1           And from 1962 to nineteen sixty -- '76, who did  
2   you report to?

3   A.    '76.

4   Q.    As -- as vice-president of research and  
5   development.

6   A.    Well there were different people.  At --

7           Initially to Bob Roper.  Then Bob Roper had some  
8   coronary problems, he had a heart attack, and they  
9   provided him with an assistant vice-president who  
10   handled matters, and I worked with that person.  It  
11   was first Hugh Cullman and then Clifford Goldsmith.  
12   So there were a number of different people with whom  
13   I worked during this period.

14   Q.   Who was the director of research and development  
15   during the time that you were vice-president for  
16   research and development?

17   A.    Well we had four --

18           We had five departments.  I had a director of  
19   research; I had a director of development; I had a  
20   director of analytical services; one for  
21   administrative services; and I set up an organization  
22   known as technical information services, which also  
23   had a director.  At the beginning these people had  
24   titles of managers instead of directors, but as the  
25   department grew we upgraded the title and started

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1 calling these people directors.

2 Q. Who -- who was the manager or director of  
3 research?

4 MR. SILBERT: In what timeframe?

5 A. At what time? Yeah.

6 Q. '62 to '76. And if there was more than one,  
7 tell me.

8 A. Well the --

9 When I came, the person who had the title of  
10 manager of research was a man named Andy O'Keefe, I  
11 believe. And after he left, which he did during the  
12 first year of my tenure, I employed a man named  
13 Abraham Bavley, B-a-v-l-e-y, and he was there for  
14 about three years and left. And then I employed Dr.  
15 Tom Osdene to be the director of research.

16 Q. And --

17 A. That would be about 1965, '63, somewhere in that  
18 time.

19 Q. And -- and then was Osdene director of research  
20 up until the time that you became a staff  
21 vice-president?

22 A. Yes.

23 Q. Okay. Where did Bob Seligman fit in the  
24 organizational chart?

25 A. Bob Seligman was there and he became director of

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1 development.

2 Q. And who succeeded you as vice-president for  
3 research and development in 1976?

4 A. Bob Seligman.

5 Q. So when you were --

6 When you were vice-president for research from  
7 '62 to '76, O'Keefe and Bavley and Osdene and  
8 Seligman all reported to you.

9 A. Yes.

10 Q. Okay. And you in turn reported to Hugh Cullman  
11 or Clifford Goldsmith.

12 A. Yes.

13 Q. Where was Joseph Cullman III in the  
14 organizational structure?

15 A. He was chairman of the company. When I came  
16 with the company he had the title of chairman and  
17 president, and then there was some reorganization as  
18 the company grew and they established another person  
19 as president. And Hugh Cullman -- I mean Joseph  
20 Cullman had the title of chairman and CEO.

21 Q. During the '62 to '76 period, did -- did you  
22 ever report directly to Joe Cullman?

23 A. No.

24 Q. From time to time when you were either director  
25 of research or vice-president for research, you had

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1 occasion to make presentations to the Philip Morris  
2 board of directors; is that correct?

3 A. Yes.

4 Q. And you also, in your position as vice-president  
5 of research and development or when you were director  
6 of research and development, reviewed reports  
7 prepared by people working for you in the research  
8 and development department; correct?

9 A. Yes.

10 MR. NUNLEY: Objection to form.

11 Q. Okay. Do you recall when the U.S. Surgeon  
12 General issued his first report on smoking and  
13 health?

14 A. Yes.

15 Q. When was that?

16 A. January 1964.

17 Q. Would it be safe to say that that was a -- a  
18 significant event in the Philip Morris corporate  
19 history?

20 MR. SILBERT: I object. I object to the --  
21 asking the witness to state a conclusion about the  
22 report.

23 MR. NUNLEY: Objection --

24 MR. SILBERT: You can ask facts relating to  
25 it.

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1           MR. GORDON: Counsel, you're exceeding the  
2 scope of order. You can object to the form, and that  
3 will be all.

4           MR. SILBERT: That's not an objection to  
5 the form, that goes more to the substance of the  
6 question.

7           MR. GORDON: You're not --

8           MR. SILBERT: It's not an objection to  
9 form.

10          MR. GORDON: Well counsel, we're going  
11 to -- we're going to call the judge if you're going  
12 to -- if -- if you're going to be objecting beyond  
13 form of the question. You're not permitted to do  
14 that.

15          MR. SILBERT: I disagree with you. That's  
16 not my reading of the order.

17          MR. GORDON: Okay. Let's call the judge.

18          THE REPORTER: Off the record, please.

19          (Recess taken.)

20          (Plaintiffs' Exhibit 129 was marked  
21 for identification.)

22          MR. GORDON: I'll withdraw that last  
23 question. And I'll just note that -- that we've  
24 discussed it and -- and counsel will state objections  
25 and -- and succinctly state the nature of the

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1 objection without elaboration.

2 Is that your understanding?

3 MR. SILBERT: That is my understanding of  
4 the court order.

5 MR. GORDON: And that's -- the Arch people  
6 are --

7 MR. WEIL: That's acceptable to us.

8 MR. GORDON: Fine.

9 MR. SANDMAN: Acceptable to us as well.

10 MR. WEIL: Just to clarify, one needs not  
11 state the grounds of the objection, it appears.

12 MR. GORDON: Well I -- I think the order,  
13 you know, calls for some very simple explanation.  
14 And -- and maybe you could --

15 MR. NUNLEY: No, no.

16 MR. GORDON: -- say "form" or --

17 MR. WEIL: It's permissible.

18 MR. NUNLEY: It is permissible. I think  
19 you are given the option, you can say objection, or,  
20 it says, if desired, followed by the basis of the  
21 objection.

22 MR. GORDON: Okay.

23 MR. NUNLEY: So as I read the order you can  
24 say objection, in which you preserve everything, or  
25 you can state objection, and if you state a specific

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1 one, then you put your objection on the record.

2 MR. GORDON: Okay. Let me back up and ask  
3 a couple questions I forgot to ask earlier

4 BY MR. GORDON:

5 Q. There is a K. Sharp on this Exhibit 128. Is  
6 that Karol Sharp?

7 A. Karol Sharp, yes.

8 Q. She was your secretary?

9 A. Yes, sir.

10 Q. For how many years?

11 A. I don't recall exactly when she started. I  
12 think in the late '70s.

13 Q. Until you retired?

14 A. Until I retired, yes.

15 Q. And did --

16 She was the person who kept your files?

17 A. Yes.

18 Q. Have you ever had your deposition taken before?

19 A. Oh, in connection with some patent litigation.

20 Q. One time?

21 A. I believe, yeah, one time. Yeah.

22 Q. Never in connection with a smoking-and-health  
23 case.

24 A. No, sir.

25 Q. Okay. And did you review any documents

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1 specifically in preparation for this deposition?

2 A. Yes.

3 Q. What did you review?

4 A. Oh, I don't know. A wide number of documents  
5 that were reviewed in our discussions with counsel.

6 I don't -- you -- I --

7 I don't recall all the documents that we  
8 reviewed. We reviewed some of them.

9 Q. We -- let's -- let's do this. Throughout this  
10 deposition I'm going to be showing you --

11 A. Yes.

12 Q. -- a number of documents. If it's a document  
13 that you've recently reviewed, will you -- will you  
14 let me know that?

15 A. Yes.

16 Q. Okay.

17 A. If I remember that we reviewed it.

18 Q. Right.

19 A. You know, this has gone on over a period of  
20 time, the -- the -- our preparation.

21 Q. How long a period of time?

22 A. Well we had a meeting last week for one day, and  
23 yesterday.

24 Q. How long was the meeting yesterday?

25 A. Oh, four or five hours I believe.

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1 Q. And many of the documents that you reviewed in  
2 recent days are documents that you've been reviewing  
3 in connection with your consultation work for Philip  
4 Morris for the past few years.

5 A. Some of them, yes.

6 Q. Okay. All right, let's -- let's start with  
7 Exhibit 129. And I guess the first question is: Is  
8 this a document that you recall reviewing recently?

9 A. Yes, it is.

10 Q. Okay. So this document is a presentation that  
11 you made to the Philip Morris board of directors  
12 shortly after the first Surgeon General's report came  
13 out; correct?

14 A. No, sir. I don't think it is.

15 Q. I'm -- I'm sorry, I misspoke. It's a -- it's  
16 a -- an analysis that you prepared and distributed to  
17 the individuals listed on the --

18 A. Yes.

19 Q. -- the page there.

20 For the record, by the way, this Exhibit 129 is  
21 Bates 1000335612, and the -- the distribution list  
22 would be that which begins on 5614; correct?

23 A. Right.

24 Q. Okay. And included Hugh Cullman, who was your  
25 superior?

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- 1 A. Yes.
- 2 Q. Who was H. Atkins?
- 3 A. Mr. Atkins, I believe, as I recall it, was
- 4 director of purchasing.
- 5 Q. Who was A. C. Britton?
- 6 A. A. C. Britton was vice-president for
- 7 manufacturing.
- 8 Q. J. E. Lincoln, that was Jet Lincoln?
- 9 A. Jet Lincoln, yes.
- 10 Q. What was his position?
- 11 A. He was director of marketing in the market --
- 12 mar -- marketing research in the marketing department
- 13 in New York.
- 14 Q. I -- I forgot to ask: What was Hugh Cullman's
- 15 title at this point?
- 16 A. I'm not sure. He -- when --
- 17 When Mr. Roper had his first heart episode, Hugh
- 18 Cullman was assigned to him, to work with him as an
- 19 assistant to relieve him of some of his burden, and
- 20 then, unfortunately, Mr. Roper succumbed to another
- 21 heart attack, and Hugh Cullman took over as -- for
- 22 a -- for a limited period as executive vice-president
- 23 operations and subsidiaries. And I'm not sure, but I
- 24 think that this was the time when he was acting as
- 25 vice-president operations and subsidiaries.

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- 1 Q. And who was G. W. Macon?
- 2 A. George Macon was vice-president of leaf
- 3 acquisitions.
- 4 Q. Okay. Now after the Surgeon General's report
- 5 came out, you studied it very carefully; correct?
- 6 A. Well I studied it.
- 7 Q. Okay. And --
- 8 You know, I apologize, I forgot to ask earlier:
- 9 What -- what is your Ph.D. in?
- 10 A. Physical chemistry.
- 11 Q. Okay. When did you get that Ph.D.?
- 12 A. 1939.
- 13 Q. Did you work in the tobacco industry between
- 14 1939 and 1958?
- 15 A. Starting about 1953, while I was director of
- 16 research at the Textile Research Institute in
- 17 Princeton, I also served on a one- or two-day-a-month
- 18 basis for a time as a consultant to Benson & Hedges.
- 19 Q. Which later became part of Philip Morris?
- 20 A. Yes.
- 21 Q. What was the nature of your consulting work
- 22 from --
- 23 A. It had to do with the improvement of the quality
- 24 of the cotton filter which went into the Parliament
- 25 cigarette.

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1 Q. Okay. Now in this Exhibit 129, you're  
2 summarizing your analysis of the Surgeon General's  
3 report; correct?

4 A. Yes.

5 Q. And one of the points you make is that you see  
6 little basis for disputing the findings of the  
7 Surgeon General; correct?

8 I direct your attention to 5615.

9 A. Yeah.

10 MR. SILBERT: Excuse me, to what page?

11 MR. GORDON: 5615.

12 THE WITNESS: 5615. This -- this number  
13 here.

14 MR. SILBERT: Yes.

15 THE WITNESS: Yeah. All right.

16 MR. GORDON: I'm going with the last four  
17 numbers of the Bates -- Bates number.

18 A. You're referring to --

19 Q. The second full paragraph under "INTRODUCTION  
20 AND SUMMARY."

21 A. Excuse me, what was the question about?

22 Q. After your review of the Surgeon General's  
23 report, you concluded that there was little basis for  
24 disputing the findings; correct?

25 A. Is that on this page?

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1 Q. Yeah. Why -- let's --

2 You know what? Why don't you read the -- for --  
3 the -- the second full paragraph under "INTRODUCTION  
4 AND SUMMARY." Just -- just read it into the record  
5 and we'll talk about it. Where it starts with "The  
6 onus of proof...."

7 A. I see, yes.

8 I said "...as little basis for disputing the  
9 findings at this time has appeared."

10 Q. Right. At that time, when you wrote this, you  
11 thought that -- that there was little basis for  
12 disputing the findings; correct?

13 MR. WEIL: Objection.

14 Q. Of the Surgeon General's report.

15 A. Of the Surgeon General's report.

16 Q. Right. Is that correct?

17 A. Yes.

18 Q. Okay. And --

19 A. Isn't that what it says?

20 The statement says, as I read it, that in -- in  
21 the pro -- in the "Positive programs to cure ills  
22 cited in this report, whether real or alleged, are  
23 recommended, as little basis for disputing the  
24 findings at this time has appeared."

25 Q. And the "findings" in that sentence refers to

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1 the findings of the Surgeon General's report; --

2 A. Yes.

3 Q. -- correct?

4 So at this time when you wrote this, you  
5 concluded that there was -- there was little basis  
6 for disputing the Surgeon General's findings;  
7 correct?

8 A. I think that was the intent, yes.

9 Q. And you saw that as a competitive opportunity  
10 for Philip Morris; correct?

11 A. Well I don't recall what I was thinking at the  
12 time that I wrote this. This was in 1964.

13 Q. I understand. And --

14 Let me direct your attention to the middle of  
15 that same paragraph where it says, "Meeting this  
16 challenge affords Philip Morris a splendid  
17 opportunity to gain a competitive edge through  
18 effective technical activity." See that sentence?

19 A. Yes.

20 Q. Now do you recall that in 1964, shortly after  
21 you read the Surgeon General's report, you were of  
22 the belief that the Surgeon General's report created  
23 a competitive opportunity for Philip Morris?

24 A. Well through effective technical activity.

25 Q. Okay. And-- and -- and in fact that's what this

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1 report is largely about; --

2 A. Yes.

3 Q. -- right, your proposal for that technical  
4 activity?

5 MR. NUNLEY: Objection as to form.

6 A. I'd just like to say that this whole thing was  
7 written from the viewpoint of a research director,  
8 who is always recognizing -- or looking at things  
9 from the point of view of the technical potentiality.

10 Q. And you're offering your perspective as the  
11 research director.

12 A. Yes.

13 Q. And from your perspective as the research  
14 director, after reading the Surgeon General's report,  
15 you came to the conclusion that if Philip Morris were  
16 to direct its research and development activities in  
17 a certain way, that it could provide the competitive  
18 advantage for Philip Morris in the marketplace;  
19 correct?

20 MR. NUNLEY: Object -- objection as to  
21 form.

22 THE WITNESS: What does that refer to?

23 MR. SILBERT: You can -- you can answer the  
24 question.

25 THE WITNESS: Well I was distracted by the

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1 word -- by the comment down the line here. I'm  
2 sorry.

3 MR. GORDON: I understand. Let me -- let  
4 me see if I can restate that question.

5 Q. One of your --

6 One of your roles as the director of research  
7 was to share your views with senior management as to  
8 areas in which you think -- you thought that Philip  
9 Morris research and development activities should  
10 move; correct?

11 A. I think that's a good statement. Yes.

12 Q. And after you read the Surgeon General's report,  
13 your view as director of research was that -- or I --  
14 I apologize if I misspoke.

15 A. Well that's all right.

16 Q. You were -- you were vice-president for  
17 research --

18 A. Yes.

19 Q. -- at that point.

20 Your view, after reading the Surgeon General's  
21 report as the vice-president of research, was that  
22 this presented an opportunity for Philip Morris to  
23 improve its competitive standing with the other  
24 cigarette manufacturers through a program of research  
25 and development.

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1 A. Yes.

2 MR. NUNLEY: Objection as to form.

3 Q. Okay. And you lay out the steps you are

4 proposing in this 1964 Exhibit 129.

5 A. Yes.

6 Q. Okay. One of those is to expand the

7 intelligence effort in a -- in a variety of areas?

8 A. Yes.

9 Q. That would be point number one.

10 And that means collecting data from outside

11 sources; correct?

12 A. Yes.

13 Q. Okay. You also advocate an increased laboratory

14 study of several different areas?

15 A. Yes.

16 Q. Okay. And you suggest developing, by the end of

17 the year -- the year being 1964 -- a superior filter

18 cigarette.

19 A. Yes.

20 Q. Correct? Okay.

21 Ah --

22 MR. SILBERT: Well counsel, I just -- I

23 have one problem with that question: it omitted

24 several other things he recommended.

25 MR. GORDON: And -- and I don't -- thank

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- 1 you. I don't mean to limit that.
- 2 Q. What -- what --
- 3 What are the other things you recommended?
- 4 A. Well let --
- 5 Q. In this report.
- 6 A. In -- in item three where I talk about a
- 7 superior cigarette, I'm referring to one which had
- 8 gas-phase-absorption characteristics or properties.
- 9 Q. And low total particulate matter?
- 10 A. And low -- low tar and particulate matter, yes.
- 11 Q. And the -- the goal of all these things that you
- 12 were suggesting was to have a cigarette that had --
- 13 was biologically approved on all major health
- 14 questions; correct?
- 15 A. No, I wouldn't say that.
- 16 Q. Well in fact that is what you said; isn't it, at
- 17 the very bottom of page 615?
- 18 A. The hoped-for result would be that it would be
- 19 improved by those criteria which were then being
- 20 applied as to what was an improved cigarette.
- 21 Q. Okay. But that was your goal with this research
- 22 proposal, was to come up with a cigarette that was
- 23 biologically approved on all major health questions;
- 24 correct?
- 25 A. Well you could say that, yes.

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1 Q. Okay. And you, speaking as -- strictly as the  
2 vice-president for research, believed that if you  
3 came up with such a product, that that should be  
4 vigorously advertised on that basis.

5 MR. NUNLEY: Objection as to form.

6 Q. Correct?

7 A. No, I don't recall that it should be -- oh, I  
8 did say it was --

9 Yes. All right.

10 Q. So in 1964 you thought the research program  
11 ought to be geared towards developing a cigarette  
12 that was biologically approved on all major health  
13 questions, and then vigorously --

14 A. Right.

15 Q. -- vigorously advertise it as such.

16 A. I apparently did --

17 Q. Okay.

18 A. -- advocate that it be advertised.

19 Q. Okay. And direct your attention now to page two  
20 at the bottom of the page -- or well I guess it's  
21 changed page numbering. Now that -- now that it  
22 actually has document page numbers, so at the bottom  
23 of page two, you were arguing that -- that the  
24 research and development activity of Philip Morris  
25 should be unfettered by non-technical restrictions;

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1 correct?

2 MR. NUNLEY: Object to the form.

3 MR. WEIL: Yeah. I join that objection.

4 (Discussion off the stenographic record.)

5 A. Yes, --

6 Q. And --

7 A. -- it says that.

8 Q. Okay. And in 1964 you thought that health  
9 impact would be an important basis for competition in  
10 the industry in the next few years; right?

11 A. Yes.

12 Q. And you believed that, in 1964, that these  
13 competitive pressures suggested a breakup to the  
14 common-front approach that the industry had been  
15 taking.

16 MR. SILBERT: I -- I object simply to the  
17 form. It -- it directs to 1964 as opposed to the  
18 date of the memo.

19 MR. GORDON: Well okay. Thank you.  
20 I'll -- I'll clarify that.

21 Q. You believed at the time you wrote this memo in  
22 February of 1964 that these competitive pressures  
23 on -- on health issues suggest that -- a breakup of  
24 the common-front approach that the industry had been  
25 taking; correct?

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1 A. Well I have no recollection of what I meant by  
2 "common front."  
3 Q. Well that's what you said, though, in 19 --  
4 A. Yes.  
5 Q. Okay. And in 1964, in February of 1964, you  
6 understood that R. J. Reynolds was continuing to  
7 advocate a joint front; correct?  
8 A. No, I don't recall that.  
9 Q. Why don't you turn to the next page. Very top  
10 of the page.  
11 A. Right.  
12 Q. At that --  
13 At the time in 1964, R. J. Reynolds was the  
14 number one cigarette seller in the country; right?  
15 A. Yes.  
16 Q. Who --  
17 And Philip Morris was actually down at the  
18 bottom; wasn't it?  
19 A. They were number four or five, yes.  
20 Q. Okay. American was number two at that point?  
21 A. Yes.  
22 Q. Liggett --  
23 A. As I recall it.  
24 Q. Okay. So Philip Morris had a very small share  
25 of the market relative to what it is today.

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1 A. Yes.

2 Q. Okay. And do you recall approximately what R.

3 J. Reynolds' share of the market was in 1964?

4 A. No.

5 Q. Okay. But they were -- they had quite a bit

6 more than Philip Morris; correct?

7 A. Yes.

8 Q. Okay. And in 19 --

9 In February of 1964, R. J. Reynolds was  
10 continuing to advocate a joint front in research;  
11 correct?

12 MR. NUNLEY: Objection to form.

13 A. I don't recall --

14 I don't understand what you mean by that  
15 statement.

16 Q. Well let me withdraw the question.

17 In February of 1964, you understood that  
18 American and Liggett Myers were showing signs of  
19 bolting from the common front; correct?

20 A. Apparently.

21 Q. Okay. And you under -- you understood --  
22 what -- strike that.

23 In February of 1964, you believed that American  
24 and Liggett -- and Liggett & Myers were contemplating  
25 doing research to develop a healthier cigarette;

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1 correct?

2 MR. NUNLEY: Objection, speculation.

3 A. I -- I don't recall that. First place, I  
4 don't -- I don't know that I envisaged this as being  
5 a, quote, healthier cigarette, unquote. The -- the  
6 competition was along lines such as lower tar and  
7 nicotine, without any implied implication one was  
8 healthier than the other.

9 Q. Well, but you say here that the -- the -- it  
10 will be the health competition that will become more  
11 intense; correct?

12 A. I did say that earlier.

13 Q. And you say it again a little bit further down  
14 in this paragraph.

15 A. Uh-huh.

16 Q. Correct?

17 MR. SILBERT: Well I -- but he says "which  
18 is to say technical competition." I don't think that  
19 question is quite fair, Mr. Gordon.

20 Q. Well, all the cigarette companies had been  
21 competing in the area of low tar for many years prior  
22 to 1964; correct?

23 A. Yes.

24 Q. And what you were suggesting in February of 1964  
25 was that Philip Morris start directing its efforts to

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1 take advantage of what you predicted would be health  
2 competition in the future.

3 A. Well I don't know what is meant by the term  
4 "health competition." I -- at --

5 At this point I don't recall what I had in  
6 mind. I will agree with you that the competition  
7 with regard to tar and nicotine was very intense, and  
8 it was based on not only the conception that the  
9 public had that lower tar and nicotine might be less  
10 harmful, but it was also based on the, you know,  
11 the -- the -- the -- what you might call the -- the  
12 numbers game where cigarettes competed to see which  
13 ones could deliver a product of lower tar and  
14 nicotine value.

15 Q. That -- that was referred to as the tar derby;  
16 right?

17 A. Yes.

18 (Discussion off the stenographic record.)

19 Q. And that was in the '50s; right?

20 A. Yes.

21 Q. Okay.

22 A. It began in the '50s.

23 Q. And in February of 1964, what you were  
24 advocating was development of a cigarette that would  
25 be bi -- biologically approved on all major health

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1 questions.

2 MR. SILBERT: I think that's been asked and  
3 answered.

4 A. No, that's a -- that's an extrapolation beyond  
5 what I visualized I was getting at here.

6 Q. I -- I agree with your counsel, it was asked and  
7 answered. I'm just trying to get us back on track  
8 here. If we need to go back --

9 Do you want to go back to the first page where  
10 you talk about the hoped-for results of the efforts  
11 that you're proposing there?

12 A. Yes.

13 Q. Okay. And the hoped-for results of the efforts  
14 that you were proposing in this document were -- was  
15 a cigarette that was biologically approved on all  
16 major health questions.

17 MR. SILBERT: Asked and answered.  
18 Objection.

19 Q. Correct?

20 A. No, the -- I don't think it says -- does it  
21 say -- yes, "all major health questions."

22 I would like to point out that I was relatively  
23 new, and the whole concept of what you would describe  
24 as -- or I describe as major health questions were,  
25 you know, not as well defined as they might have been

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1 later on.

2 Q. And you were only speaking from your position as  
3 a -- as a research director; right?

4 A. Yes, with a background in physical chemistry.

5 Q. Right. And you weren't aware of some of the  
6 other issues involved in the cigarette industry  
7 beyond research and development; correct?

8 A. Yes.

9 Q. Okay. But given your perspective as the  
10 director -- as the vice-president of research and  
11 development, based on what you read in the Surgeon  
12 General's report, your view was that if Philip Morris  
13 could develop a cigarette that was viewed -- that was  
14 biologically approved on all major health questions,  
15 that that could be a significant advantage for Philip  
16 Morris in the marketplace; correct?

17 MR. SILBERT: Objection, asked and  
18 answered.

19 MR. NUNLEY: Objection as to form.

20 A. In -- in -- in my concept of what this involved.

21 Q. Right. And -- and that's all you were proposing  
22 here.

23 A. Yes.

24 Q. Okay. Okay. And you said that a careful review  
25 of the Surgeon General's report had disclosed no

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1 vitiating errors of commission. See that phrase on  
2 Bate's stamp number 5617?

3 A. I made the statement, yes.

4 Q. Okay. And I'll direct your attention to page  
5 five, and that's where you begin to set out your  
6 specific recommendations for Philip Morris; right?

7 A. Yes.

8 Q. Okay. And this is from your perspective as a  
9 scientist.

10 A. Yes.

11 Q. Okay. And you as a scientist and vice-president  
12 of research for Philip Morris are suggesting that  
13 Philip Morris should embrace the health area as an  
14 opportunity for competition; correct?

15 MR. NUNLEY: Objection as to -- as to the  
16 form of the question.

17 A. That's the statement I made, yes.

18 Q. Okay.

19 MR. NUNLEY: Can I just say this? Corey at  
20 times you're reading directly from the document and  
21 at times you're not. I think that -- what you just  
22 asked was a paraphrase, and I'm not sure that it is  
23 what the document says. Maybe I'm wrong.

24 MR. GORDON: Well I'm not asking -- I  
25 didn't ask him what the document says.

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1 MR. NUNLEY: Well you seem to be flipping  
2 back and forth on that. If you're pointing --

3 MR. GORDON: I -- and I -- and you made a  
4 form objection. And that's preserved.

5 MR. NUNLEY: No, I'm going to stop with  
6 that, but I just want to tell you you point him to a  
7 page that suggests you're reading from the document  
8 itself.

9 MR. GORDON: Dr. Wakeham has demonstrated  
10 his ability to explain when he doesn't think I've  
11 accurately characterized his position.

12 BY MR. GORDON:

13 Q. One of the things that you're recommending to  
14 Philip Morris management in this document, that  
15 Philip Morris adopt as an internal policy for  
16 technical purposes the view that greater benefit will  
17 accrue from accepting the Surgeon General's report on  
18 face value and proceeding to cure the ills suggested  
19 in that report, whether they are real or imagined,  
20 than from engaging in efforts to dispute and refute  
21 the Surgeon General's report; correct?

22 A. That's what I said.

23 Q. Okay. And you in fact advocated that the  
24 research effort should include very little attempts  
25 to refute or dispute the Surgeon General's report;

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1 correct?

2 A. Yes.

3 Q. Okay. And you suggested that you should -- that  
4 Philip Morris should move promptly to establish a  
5 suitable biological approval specifications for all  
6 new smoking products; correct?

7 A. That's what I suggested, yes.

8 Q. And you thought that if you did that, if you  
9 came up with a suitable biological approval  
10 specifications, that that would enhance Philip  
11 Morris's advertising opportunities; right?

12 MR. NUNLEY: Objection to form.

13 MR. SILBERT: You're asking him as to what  
14 he thought then?

15 MR. GORDON: Right.

16 A. Yes, I did say that.

17 Q. Okay. And now directing your attention to page  
18 eight, at the bottom, in February of 1964 it was your  
19 belief that the cigarette industry had -- should come  
20 forward with evidence to show that its products were  
21 not harmful; right?

22 MR. NUNLEY: Well objection as to the form  
23 because you leave off the premise of that question.

24 A. This is a generalized --

25 MR. SILBERT: I -- I join in --

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1 I object to the form of that question, Mr.  
2 Gordon. I think it does omit a part of what he  
3 states.  
4 A. What this says is an opinion with regard to the  
5 stance of the industry which I am making for  
6 management. That's my view.  
7 Q. Right. All you're doing is offering  
8 management --  
9 A. That's right.  
10 Q. -- your opinion as a scientist --  
11 A. That's right.  
12 Q. -- -- and research director.  
13 A. And I -- and I say here, if you read the whole  
14 statement, "If it is true that the onus of proof in  
15 the Smoking and Health issue has shifted to the  
16 tobacco industry -- if the onus of proof -- then the  
17 industry must come forward with evidence to show that  
18 its products, present and prospective, are not  
19 harmful."  
20 Q. Okay. And you believed --  
21 I'm sorry, go ahead. Well --  
22 A. And then I say medical research must be done for  
23 this purpose.  
24 Q. Okay.  
25 A. Okay.

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1 Q. But let's just back up a second.

2 In February of 1964, you believed that the onus  
3 had in fact shifted.

4 A. I think that --

5 Yes, I did believe that.

6 Q. Okay.

7 A. But --

8 Q. And -- I'm sorry.

9 A. Go ahead.

10 Q. Well because you believed --

11 MR. NUNLEY: Let me just --

12 Dr. Wakeham, you should feel -- you should feel  
13 free to answer the questions as fully as you'd like  
14 to. Mr. Gordon doesn't mean to cut you off, he's not  
15 trying to cut you off.

16 THE WITNESS: No, I understand that.

17 MR. NUNLEY: He's just an excitable  
18 person.

19 MR. NUNLEY: So finish your questions and  
20 then he'll accord you the courtesy of doing that.  
21 Finish your answer I should say.

22 MR. SILBERT: Had you finished?

23 A. Well I was just going to say: This is a  
24 statement that was made in the context of the  
25 recognition that what it involved was in effect

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1 proving the negative, that cigarettes were not  
2 harmful. This is an extremely difficult thing to  
3 do. And I'm not saying it's impossible, but it's  
4 extremely difficult. And so it was with --

5 That's why the statement was made in the first  
6 sentence in the way it was made, as I recall it.

7 Q. Okay. And one of the things you were advocating  
8 in order to move the industry to a point where it  
9 could show that its products were not harmful, was  
10 that in -- again in February of 1964, you as a  
11 scientist and vice-president of research, were  
12 advocating that the cigarette industry abandon its  
13 past reticence to do medical research; correct?

14 MR. NUNLEY: Objection. Same objection.

15 A. Well I'm expressing an opinion.

16 Q. Right. And your opinion was that -- that the  
17 industry should abandon its past reticence to do  
18 medical research.

19 A. Yes.

20 Q. Okay. And you were further advocating that --  
21 that that research -- that it wasn't enough to do  
22 medical research through third parties; you were  
23 advocating that -- that the individual companies  
24 start doing their own in-house research. Correct?

25 MR. NUNLEY: Objection as to form.

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1 A. Well in-house or by contract research.

2 Q. Well what's the difference between contract  
3 research and third parties?

4 A. Well I don't know what you mean by "third  
5 parties."

6 Q. Well I guess the question is what you meant by  
7 "third party" when you used the phrase "third  
8 parties." In -- in February of 1964 you said it is  
9 not enough to sponsor the work of third parties.

10 MR. NUNLEY: Question?

11 Q. Right?

12 A. Well yeah, I had in mind as an illustration here  
13 the gift to the American Medical Association by --

14 Q. And you then say individual companies must also  
15 do their own research if they expect to develop  
16 proprietary positions for the health competition.

17 A. Yeah.

18 Q. Okay. Is that referring to in-house research?

19 A. In-house or contract research.

20 Q. Now part of your role as vice-president of  
21 research and development was to keep apprised of what  
22 was happening technically with other companies;  
23 right?

24 A. Insofar as it was possible.

25 Q. And to apprise management when you believed that

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1 there were significant technological activities being  
2 undertaken by other companies; correct?

3 A. In a general way, yes.

4 MR. GORDON: Okay. Mark this exhibit.  
5 (Plaintiffs' Exhibit 130 was marked  
6 for identification.)

7 MR. GROSSI: Excuse me. For some of us  
8 that are trying to keep track, could you just read  
9 the Bates number?

10 MR. GORDON: Yes. Thank you very much. If  
11 I forget, please remind me.

12 It's Bates number 1001885146, memo dated  
13 February 25, 1964.

14 MR. GROSSI: Thank you.

15 MR. NUNLEY: Corey, for the record, do you  
16 want me to read in the Bates numbers for the others,  
17 or did you already do that, for Exhibits 128 and  
18 129?

19 MR. GORDON: I did for 129. I did not for  
20 128. The Bates -- starts with Bates -- Exhibit 128  
21 starts with Bates numbers 1003203975.

22 Thank you.

23 BY MR. GORDON:

24 Q. Dr. Wakeham, Exhibit 130 is a memo from you to  
25 Mr. Cullman; right?

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1 A. Yes.

2 Q. And in -- in this memo you're alerting Mr.  
3 Cullman to your -- to information that you had  
4 learned that American Tobacco Company was pursuing  
5 development of a health cigarette; right?

6 MR. WEIL: Objection.

7 A. I have -- I have -- I have no recollection of  
8 the basis for this memo.

9 Q. Okay. But that is what the memo says; right?

10 A. The memo says that, yes.

11 Q. And this was part of your routine duties as  
12 vice-president of research, to apprise your superiors  
13 of information such as what's found in Exhibit 130;  
14 right?

15 A. Yes.

16 Q. Okay. And this was just a few days after you'd  
17 made that presentation -- or strike -- strike --  
18 not -- strike that.

19 This memo on American pursuing the development  
20 of a health cigarette, that came just a few days  
21 after you had prepared your analysis of the Surgeon  
22 General's report reflected in Exhibit 129; correct?

23 A. Well that's evident from the dates, February  
24 18th versus February 25.

25 Q. Okay.

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1                   (Plaintiffs' Exhibit 131 was marked  
2                   for identification.)

3 BY MR. GORDON:

4 Q.    Let me just explain what -- what this is all for  
5 the record for people who are keeping track of Bates  
6 numbers. It's a little confusing. This is Exhibit  
7 131, it's Bates -- bears Bates stamp number  
8 1000307159. It is apparently identical to exhibit  
9 2023226942. The copy I've marked is more readable  
10 than the 202 one, and it also, according to the  
11 information provided to us by Philip Morris, was  
12 found in Dr. Wakeham's office. So that's why I'm  
13 using Exhibit 131 even though the 202 apparently has  
14 been used in other things before.

15               MR. NUNLEY: Corey, which one was -- you  
16 say was identified as being from Dr. Wakeham's  
17 office?

18               MR. GORDON: Exhibit 131, according to the  
19 4A index.

20 BY MR. GORDON:

21 Q.    Exhibit 131 is a copy of a presentation you made  
22 to the Philip Morris board of directors in October of  
23 1964; correct?

24 A.    Yes.

25 Q.    And you were advising the board of directors in

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1 your capacity as vice-president of research and  
2 development your belief that the number one objective  
3 of the -- of Philip Morris was to develop products  
4 having maximum consumer appeal in the current and  
5 future health-conscious marketplace; correct?

6 MR. NUNLEY: Objection as to form.

7 MR. WEIL: Objection.

8 A. Well I don't recall this particular  
9 presentation. I really need to read this through.

10 Q. Please do, because I have several questions  
11 about it.

12 A. All right.

13 Q. Okay. And let me go back and ask the question  
14 that I asked before.

15 In October of 1964, in your presentation to the  
16 board of directors, it was your statement that the  
17 Philip -- Philip Morris's number one objective was to  
18 develop products having maximum consumer appeal in  
19 the current and future health-conscious marketplace;  
20 right?

21 A. Right.

22 Q. In other words, to make products that would  
23 appeal to people who were concerned about their  
24 health; correct?

25 A. And also that would be acceptable to them.

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1 Q. Right.

2 THE REPORTER: We have to go off the record  
3 a moment, please.

4 (Discussion off the record.)

5 BY MR. GORDON:

6 Q. And in fact, what you were reporting to the  
7 board of directors in October 1964 was that the  
8 research and development department had been working  
9 on such a cigarette for the last two years; correct?

10 MR. NUNLEY: Objection as to form.

11 A. Well I'd like to give a little orientation with  
12 regard to this at this point. We had, in the -- when  
13 I came to the department, concern about the general  
14 area of irritation of smoke to the nasal and mucous  
15 passages which resulted in coughing, for example, and  
16 our earlier investigations which are referred to here  
17 had to do with attempts to improve the product from  
18 that point of view, to reduce the coughing and  
19 irritation effects.

20 Q. Okay. You talk --

21 You make reference to two specific tests here,  
22 the in vivo mucous flow, and respiratory dynamics.

23 A. Yes.

24 Q. What -- what is in vivo mucous flow?

25 A. Well it has to do with the flow of the mucous in

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1 the bronchi and in the nasal passages.

2 Q. What about respiratory dynamics?

3 A. Well respiratory dynamics is a broad term, but  
4 our principal interest there had to do with the  
5 coughing reaction.

6 Q. And you had, in the research and development  
7 department, come up with a cigarette that by those  
8 tests was physiologically better than anything else  
9 in the marketplace; correct?

10 A. Yes. We were trying to develop a product which  
11 would not give a coughing reaction, for example, or  
12 this irritation that I mentioned.

13 Q. It was --

14 The cigarette was called Saratoga; right?

15 A. Yes.

16 Q. Okay. And you believed it was physiological --  
17 physiologically an outstanding cigarette; right?

18 A. Yes. I -- I don't remember the specifications  
19 of Saratoga, but we believed it was improved in that  
20 re -- in -- with respect to the coughing and the  
21 mucous flow.

22 Q. And you physio --

23 You believed it was physiologically an  
24 outstanding cigarette that would appeal to  
25 health-conscious smokers; correct?

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- 1 A. I expressed the term that it was physiologically  
2 superior in performance.
- 3 Q. Okay. Well --
- 4 A. In -- in -- in a bioassay test.
- 5 Q. Okay. In fact you said it was --  
6 physiologically it was an outstanding cigarette;  
7 correct?
- 8 A. Hyperbole on the part of a research director.
- 9 Q. Fair enough.
- 10 And you indicated that after much discussion, we  
11 decided not to tell this physiological story which  
12 might have appealed to the health-conscious segment  
13 of the market.
- 14 A. Well the company decided that.
- 15 Q. Who --
- 16 Who had the discussions?
- 17 A. Who had what?
- 18 Q. Who had those discussions that resulted in the  
19 company deciding not to --
- 20 A. I --
- 21 Q. -- tell the physiological story?
- 22 A. I -- I don't recall the discussions.
- 23 Q. That was not something you had advocated. In  
24 other words -- strike that.
- 25 A. I -- I was not a party to the discussions with

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1 regard to what --

2 I don't recall being a party to the  
3 discussions. It was something that was really the  
4 function of the marketing and general management.

5 Q. Okay. So when you use the word "we" there,  
6 you're talking in the corporate sense, I take it.

7 A. Yes.

8 Q. Okay. You personally did not advocate the  
9 position that Philip Morris should not advertise the  
10 physiological superiority of Saratoga.

11 A. You had -- you had a couple of negatives there.

12 Q. Yeah, maybe --

13 A. It confused me with regard to the question.

14 Q. It was --

15 Well, it was ultimately the decision of the  
16 company not to advertise the physiological  
17 superior -- superiority of Saratoga; correct?

18 A. Yes.

19 Q. You were not an advocate of that position;  
20 correct?

21 A. Well I felt that if we had an improved product,  
22 it would be desirable somehow or other to let people  
23 know that it was improved in -- in some way or other.

24 Q. So you weren't advocating the position to not  
25 advertise.

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1 A. I was not advocating the position to not  
2 advertise?

3 MR. NUNLEY: Objection as to form.

4 MR. SILBERT: I -- I join in that  
5 objection.

6 A. I don't recall -- I don't recall what my  
7 position was with regard to advertising, except that  
8 I felt that somehow or other if we had a better  
9 product, it should somehow be made known, that it  
10 would be beneficial to have it made known.

11 MR. NUNLEY: Could I -- for the record,  
12 could we have a question mark, I think, after the  
13 immediately preceding answer?

14 THE REPORTER: Well I will determine that  
15 when I edit the transcript.

16 MR. NUNLEY: Well please note my request.  
17 I think as I heard the answer it was a question mark.  
18 Q. Well in fact you considered it unfortunate that  
19 the company had decided not to advertise the  
20 physiological superiority of Saratoga; correct?

21 A. I wouldn't say unfortunate. I may have been  
22 disappointed that they didn't do something in that  
23 direction.

24 Q. In fact you did say "unfortunate" back in 1964.

25 A. All right.

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1 Q. Okay. Now Saratoga didn't have particularly  
2 good taste; correct?

3 A. Well let's say it had a different taste.

4 Q. Okay. And you thought that -- strike that.

5 It was your opinion in nineteen sixty -- in  
6 October 1964 when you wrote that, that this -- the  
7 fact that it had this different taste and the fact  
8 that the public was ignorant of its physiological  
9 superiority rendered it unacceptable to the public;  
10 correct?

11 A. Well I don't recall the circumstances. I don't  
12 re -- I don't recall whether the cigarette was put on  
13 test market or not, what the basis was that the --

14 Well it says here the product was test marketed,  
15 didn't -- as test marketed, didn't have good, quote,  
16 taste, unquote. And there were --

17 The marketing department had its own mechanism  
18 for deciding whether the cigarette was an acceptable  
19 product or not.

20 Q. But from your understanding in October of 1964,  
21 the test-marketed product was unacceptable to the  
22 public that was ignorant of its physiological  
23 superiority.

24 A. Well it would be ignorant if they weren't  
25 somehow informed or advertised that it was better in

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1 some respects.

2 Q. Okay. And even after the taste was improved,  
3 you thought that it could not be effectively marketed  
4 because the FTC rules and the industry advertising  
5 code took the starch out of any advertising you could  
6 do about it; right?

7 A. I expressed that opinion.

8 MR. NUNLEY: Objection as to form, please.

9 Q. And the industry -- what is -- what do you mean  
10 by the indus -- strike that.

11 The industry advertising code, what does that  
12 refer to?

13 MR. SILBERT: What page are we on, please?

14 MR. GORDON: Bates stamp 6943. Very  
15 bottom.

16 MS. MAHER: I think -- I think you're  
17 referring to the other Bates numbers. 6943?

18 MR. GORDON: You're right. I'm sorry.

19 THE WITNESS: Six oh.

20 MR. GORDON: Six oh.

21 MR. SILBERT: Six oh?

22 MR. NUNLEY: Corey, let me tell you, I  
23 think that your earlier question, if I understand it,  
24 are you referring still to the Saratoga? Because I  
25 think that's -- I don't think you intended to be, but

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1 I don't think that's what the document says.

2 MR. GORDON: Let me first note my objection  
3 to your raising that as -- as being outside the  
4 scope; but having said that, I -- I think you're  
5 right, and it -- and I'll clear that up.

6 BY MR. GORDON:

7 Q. Dr. Wakeham, the -- the new and improved  
8 Saratoga became the Multifilter; right?

9 A. Yes.

10 Q. Okay. And -- and referring to the -- the too  
11 little, too late in terms of advertising, that refers  
12 to the Multifilter, not the Saratoga.

13 A. I -- I don't recall the details of --

14 Q. Okay.

15 A. -- of events which occurred in this connection.

16 Q. Okay.

17 MR. SILBERT: Mr. Gordon, it's now about  
18 11:00 o'clock. Would it be an appropriate time for a  
19 break?

20 MR. GORDON: Sure. Just need a quick  
21 break?

22 MR. NUNLEY: Yeah.

23 MR. SILBERT: Yes.

24 MR. GORDON: Okay.

25 THE REPORTER: Off the record, please.

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1 (Recess taken.)

2 BY MR. GORDON:

3 Q. Dr. Wakeham, in this presentation you made to  
4 the board of directors in October of 1964, you  
5 discussed the Surgeon General's report briefly;  
6 correct? Beginning at page three?

7 A. Yes.

8 Q. And you advised the board of directors that  
9 the -- that the Surgeon General's report contained  
10 few surprises for you; correct?

11 A. That's what I said.

12 Q. And then you advised the board of directors  
13 about the conclusions that you had expressed in the  
14 memorandum that we've marked as Exhibit 129;  
15 correct?

16 MR. NUNLEY: Objection to form.

17 A. I'm not sure, but I assume that that's related  
18 to the memorandum you're referring to.

19 Q. Well I want to be clear, because if there's  
20 another memorandum, I -- we -- I -- I'd like to  
21 know. But one of the --

22 A. All right.

23 Q. So let -- let's go through it.

24 The memorandum to top management from February  
25 that you're telling the --

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1 A. This is 1964, yes.

2 Q. Right?

3 In October of 1964, you're telling the board of  
4 directors --

5 A. Yes.

6 Q. -- that you had offered several conclusions to  
7 top management in a memo last February.

8 A. Yes.

9 Q. Okay. And we're trying to figure out if this  
10 was Exhibit 129 that we went through earlier. And  
11 you --

12 The first point is that you said that you had  
13 sensed that the burden of proof had shifted from the  
14 accusers of cigarettes to cigarette producers in the  
15 public eye; right?

16 MR. SILBERT: I object to that. And I've  
17 been troubled by this. And I don't want to make a  
18 speaking, but it -- you're asking if he said it, and  
19 you're not reading his identical words and you're  
20 omitting phrases. That to me is somewhat  
21 troublesome. So I object to the question in -- in  
22 that form.

23 Q. Do you see point number one?

24 A. Now what -- what was --

25 What was your question again?

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1 Q. Point number one is about your sensing that the  
2 burden of proof had shifted.

3 A. In the public eye.

4 Q. Right. And that's what you -- that was the --

5 In Exhibit 129, that's where you were talking  
6 about the onus of proof has moved from the report --  
7 has moved by the report from its usual position with  
8 the industry's accusers to the back -- to the tobacco  
9 industry itself. That's -- that's what that point  
10 refers to.

11 A. That's -- that's the way I viewed it.

12 Q. Okay. And the second point you're telling the  
13 board of directors in October that you made in this  
14 February memo was that government and private  
15 agencies would intensify their technical activities  
16 on the smoking-and-health question; right?

17 MR. NUNLEY: Well objection.

18 MR. SILBERT: Same objection. That is  
19 objection as to form for not including the entire  
20 phrase in what's being read to the witness is  
21 purportedly coming.

22 MR. GORDON: That objection is noted,  
23 counsel, and you will have an opportunity to -- to  
24 ask any additional questions you want of this  
25 person. If -- if you're going to keep making that

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1 objection, I am going to call the judge. Because I  
2 think that, at this point now, is well beyond the  
3 scope of what the court is permitting.

4 MR. SILBERT: Well I think I should be  
5 entitled to make an objection, making sure it's  
6 understood that --

7 Well what if I just say "incomplete?" Will that  
8 satisfy you? "Objection, incomplete" --

9 MR. GORDON: Sure.

10 MR. SILBERT: -- "and unfair." That's what  
11 I will say.

12 A. Well what I said -- wrote was that the  
13 government and private agencies would intensify their  
14 technical activities on the smoking-and-health  
15 question to protect their monetary and political  
16 interests.

17 Q. And you were advocating that the industry should  
18 also intensify its -- its technical activities to  
19 avoid excessive regulation and to maintain its  
20 competitive independence; right?

21 MR. NUNLEY: Objection as to form.

22 A. That's what I said.

23 Q. Okay. And in the -- this presentation to the  
24 board of directors, you were rendering the opinion  
25 that these research efforts would in all likelihood

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1 lead, sooner or later, to cigarettes generally

2 regarded as less harmful than others; correct?

3 A. Hopefully.

4 Q. Okay. And you were arguing that -- strike that.

5 You were suggesting to the board of directors

6 that in order for Philip Morris to maintain its

7 competitive position, it should have on the shelf for

8 introduction products that were better

9 physiologically than that Multifilter we talked about

10 earlier; right? Or anything else currently on the

11 market.

12 MR. NUNLEY: Objection.

13 MS. MAHER: Objection.

14 MR. NUNLEY: Fairness, incomplete.

15 A. Yes.

16 Q. Okay. And you believed that the burden of

17 developing such a product would fall on the research

18 and development department.

19 A. Yes.

20 Q. And you believed that it was in Philip Morris's

21 interests to participate in suitable ways in an

22 endeavor to learn the most from whatever knowledge

23 could be discovered, and to be prepared to take

24 commercial advantage of any developments from these

25 research programs; right?

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1 MR. SILBERT: Page?

2 A. Well that's a conclusion from a long preamble  
3 which discusses, to some extent, what kind of outside  
4 activities are taking place.

5 Q. Well all those outside activities that you  
6 summarize are related to research into  
7 smoking-and-health aspects of cigarettes; right?

8 A. But by various agencies.

9 Q. Right.

10 A. Governmental and otherwise. And my point was  
11 that we should be aware of what's going on in -- in  
12 these other activities.

13 Q. And that Philip Morris should participate in  
14 suitable ways to be prepared to take commercial  
15 advantage of any of the developments that might come  
16 out of these research activities.

17 A. In any way that we could.

18 MR. WEIL: Objection.

19 A. Yes.

20 (Discussion off the stenographic record.)

21 Q. Okay. And now I'll direct your attention to  
22 page six. What you were telling the board of  
23 directors in October of 1964 is that it was Philip  
24 Morris's aim to be prepared; right?

25 A. Yes. That's what it says.

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- 1 Q. The Boy Scout motto; right?
- 2 A. Yes, sir.
- 3 Q. Was it you who was active in Boy Scouts?
- 4 A. Yes.
- 5 Q. You're --
- 6 You were president of a council?
- 7 A. Yes.
- 8 Q. And at this point you were advising the board of
- 9 directors that, to your knowledge, all the major
- 10 cigarette companies had now allied themselves with
- 11 biological research laboratories and were actively
- 12 working in the areas of smoking-and-health research;
- 13 right?
- 14 A. That's a broad-brush statement.
- 15 Q. Okay.
- 16 A. Yes.
- 17 Q. And in your summary to the board, you said that
- 18 the research and development department is working to
- 19 establish a strong technological base with both
- 20 defensive and offensive capabilities in the
- 21 smoking-and-health situation; right?
- 22 A. Right.
- 23 Q. And you advised the board that the philosophy
- 24 was not to start a war, but if a -- if war comes, you
- 25 aim to fight well and to win; right?

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1 A. Yes.

2 I might summarize this by pointing out that this  
3 was a broad-brush pep talk to the board from a  
4 research director.

5 Q. And -- and you weren't going into that board of  
6 directors and saying we're going to take on all the  
7 other cigarette manufacturers --

8 A. No.

9 Q. -- and beat 'em.

10 A. It was -- it was more or less to reassure them  
11 that we were on the step and doing our job.

12 Q. And if -- if some of the other manufacturers  
13 started competing heavily in the marketplace with a  
14 health cigarette, you -- you were advocating how  
15 Philip Morris be in a position to -- to compete toe  
16 to toe; right?

17 A. Yes.

18 Q. Okay. But not to be the one to start a  
19 competitive war on smoking-and-health issues; right?

20 MR. NUNLEY: Object as to form.

21 A. Well I didn't want --

22 I didn't know that we should pioneer in the area  
23 of making strong advocacy for a particular brand of  
24 ours as being more or less healthful.

25 (Plaintiffs' Exhibit 132 was marked

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1                   for identification.)

2 BY MR. GORDON:

3 Q.    Showing you what's been marked as Plaintiffs'

4 Exhibit 132, Bates number 1001884878, memo dated

5 November 20th, 1964.

6 A.    Yes, sir.

7 Q.    This is a memo from you to Paul Smith?

8 A.    Yes.

9 Q.    Who was Paul Smith?

10 A.    He was general counsel of the company.

11 Q.    Philip Morris's in-house lawyer.

12 A.    Yes.

13 Q.    Okay. And you were telling Mr. Smith that you

14 had learned that American Tobacco Company had an

15 internal biomedical research program at a new

16 laboratory?

17                   MR. SILBERT: I object, incompleteness,

18 unfairness.

19 A.    Well I'm sending him an observation which -- or

20 an event which came to my attention --

21 Q.    Right.

22 A.    -- in the field of a competitive program on the

23 part of American Tobacco Company.

24 Q.    And you -- you viewed American Tobacco setting

25 up a -- an internal biomedical research program as a

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1 potential competitive threat to Philip Morris;  
2 correct?  
3 A. Well they were doing something that was outside  
4 of the broad area of chemistry and technology.  
5 Q. And you thought it was noteworthy enough to  
6 alert Philip Morris's in-house lawyer to this fact;  
7 correct?  
8 A. Apparently.  
9 Q. And you --  
10 It looks like a handwritten note at the bottom  
11 that Burke is expert in animal testing; is that  
12 correct?  
13 A. I wrote that, yes.  
14 Q. That's -- that's your writing?  
15 A. Yes.  
16 Q. Okay. And the Burke refers to this Dr. Arthur  
17 Burke that American Tobacco had employed?  
18 A. Yes.  
19 Q. Okay. So you thought it particularly noteworthy  
20 or -- strike that.  
21 One of the purposes of this memo was to alert  
22 Philip Morris's in-house lawyer that American Tobacco  
23 had hired an expert in animal testing; --  
24 A. Yes.  
25 Q. -- correct? Okay.

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1           One of the issues discussed within Philip  
2 Morris's research and development department in the  
3 mid-'60s was the concern that, from a legal point of  
4 view, biological research was not desirable because  
5 it implied a hazardous nature of the product; right?

6           MR. WEIL: Objection.

7 A.   No, I don't -- I don't view that statement as  
8 being a representation of my view.

9           (Plaintiffs' Exhibit 133 was marked  
10           for identification.)

11 BY MR. GORDON:

12 Q.   Exhibit 133 is Bates stamp numbered 1000039811,  
13 memo dated January 19th, 1965.

14           MR. NUNLEY: Indicate it carries through to  
15 815.

16 Q.   This is a memo from D. P. Murrill to you, Dr.  
17 Wakeham; is that correct?

18 A.   It would appear so.

19 Q.   Who is D. P. Murrill?

20 A.   I'm not sure what his position was.

21 Q.   And this document is a summary of a meeting held  
22 on January 13th, 1965, with all the people at the top  
23 listed as present; is that correct?

24           MR. NUNLEY: Objection, speculation.

25 A.   That's what the memorandum says. I don't recall

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1 the circumstances of this meeting.

2 Q. Okay. From time to time in -- in the research  
3 and development department, you would have meetings;  
4 right?

5 A. Yes.

6 Q. And sometimes minutes were taken of the  
7 meetings; correct?

8 A. Yes.

9 Q. And that's part of the ongoing scientific  
10 process, to -- to have meetings and to keep track of  
11 what you say at the meetings so that you have  
12 something to look back on when you address similar  
13 issues in the future; right?

14 A. Yes.

15 Q. Okay. And in this particular document, Exhibit  
16 133, the statement is made, the fourth paragraph from  
17 the top, quote, "From a legal point of view  
18 biological research is not desirable as it implies a  
19 hazardous nature of our products." See that quote?

20 A. I see that. That's not --

21 It's a quote from the memorandum.

22 Q. Right.

23 Did you ever send a memo to D. P. Murrill  
24 telling him that that was not true?

25 A. I do not recall anything of that nature.

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1 Q. Do you remember ever discussing with D. P.  
2 Murrill that he was wrong in stating that from a  
3 legal point of view, biological research is not  
4 desirable as it implies a hazardous nature of our  
5 products?

6 A. I have no recollection of that.

7 Q. Dr. Wakeham, isn't it a fact that back in this  
8 period of time in 1965, one of the concerns you had  
9 as the -- as vice-president for research and  
10 development was that the legal department was putting  
11 limitations on the kind of research you could do  
12 because of the concern that -- that doing certain  
13 types of research would imply the hazardous nature of  
14 cigarettes?

15 MR. NUNLEY: Objection as to form.

16 MR. SILBERT: I join in that objection.

17 A. I don't recall. You're now referring to a  
18 conversation I might have had with someone in the  
19 legal department?

20 Q. No. I'm talking about a general concern that  
21 you had back in 1965.

22 MR. SILBERT: You're not addressing the  
23 memorandum here.

24 A. I didn't have a concern. I wouldn't call it a  
25 concern. I was aware that there were views with

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1 regard to the litigative activity which were going on  
2 which -- well I don't know just exactly how to say  
3 it. We --

4 The legal department impressed on us and we also  
5 recognized that we were not expert in the biological  
6 field, and I think they were concerned about the  
7 litigation that was going on. I -- I don't  
8 altogether understand the nature of your question.

9 Q. During this period of time, the mid-'60s, you  
10 were advocating that Philip Morris move into the area  
11 of biological research more than it had in the past;  
12 correct?

13 MR. SILBERT: Objection.

14 A. No. I'm not sure.

15 MR. SILBERT: Wait for me to state my  
16 objection.

17 THE WITNESS: Yes, I'm sorry.

18 MR. SILBERT: My -- my objection is  
19 vagueness as to the timeframe.

20 Q. Had -- had you answered the question as fully as  
21 you wanted to?

22 A. Well all right. Would -- would you repeat the  
23 question, please?

24 Q. Sure. In the mid-1960s, weren't you advocating  
25 that Philip Morris intensify its biological research

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1 programs?

2 MR. NUNLEY: Objection as to form.

3 A. I don't recall -- I don't recall a strong  
4 advocacy on my part of what you would describe as  
5 intensification. I think that my position was that  
6 we should be aware of what is going on. I was not  
7 advocating that we engage in this type of activity.

8 (Discussion off the stenographic record.)

9 (Plaintiffs' Exhibit 134 was marked  
10 for identification.)

11 BY MR. GORDON:

12 Q. Exhibit 134 is Bates numbered 1000039670 through  
13 673, memorandum dated November 15th, 1968.

14 It's a memo from you to Mr. Goldsmith; correct?

15 A. Correct.

16 Q. Is this a document you reviewed in the last few  
17 days?

18 A. Yes.

19 MR. SILBERT: I object --

20 You've got to wait for me, --

21 THE WITNESS: I'm sorry.

22 MR. SILBERT: -- Dr. Wakeham.

23 Q. And in this memo you're advocating that Philip  
24 Morris research and development significantly  
25 increase its capabilities to investigate the health

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1 implications of tobacco, among other things;

2 correct?

3 MR. NUNLEY: Object. Corey, if you're  
4 going to read from this, could you reference it,  
5 please?

6 MR. SILBERT: Do you have a reference?  
7 Please identify.

8 MR. GORDON: I'm not reading from it,  
9 counsel. I'm asking him questions. He's got a  
10 document in front of him to refresh his memory if he  
11 wants to.

12 MR. NUNLEY: Well then if you want him to  
13 do that, give him a chance to -- to look at it.

14 MR. GORDON: If he wants a chance to look  
15 at it, he can have it. The document was reviewed  
16 very recently.

17 MR. NUNLEY: And Corey, you say you're not  
18 reading from it. I'll take -- take your  
19 representation. That sounded to me as if you were  
20 picking up language from this. All I need to know is  
21 whether -- where you're doing that so I can make a  
22 fairness objection. But if you flip the document,  
23 ask the question that includes language from it, I  
24 can't tell whether -- whether you're reading it or  
25 not. It sounded to me like you were. You represent

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1 to me that you weren't, that's fine, but in the  
2 future if -- if you're going to quote from a  
3 document, please give me a reference to the point.  
4 That's all I'm asking.

5 MR. GORDON: If I am directing to a  
6 particular quote, I will do so, but if I am  
7 extracting certain phraseology that may have appeared  
8 in a memo, I'm not necessarily going to direct your  
9 attention to that.

10 MR. NUNLEY: Well then I think that's  
11 inappropriate.

12 MR. SILBERT: I do, too. I really think  
13 that's unfair to the witness. We're talking about  
14 documents that are over -- you know, nearly 30 years  
15 old, and to extract and use language without  
16 identifying or specifying the place, Corey, I think  
17 is not fair.

18 BY MR. GORDON:

19 Q. Dr. Wakeham, do you remember the question?

20 A. I don't --

21 I'm lost.

22 Q. If you -- if you -- if you do, I'd be amazed.

23 In this memo, Exhibit 134, you advocate that  
24 Philip Morris research and development significantly  
25 increase its capabilities to investigate the health

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1 implications of tobacco, among other things;

2 correct?

3 MR. SILBERT: I'm going to request where

4 that is in the memo.

5 MR. GORDON: Well it's throughout the memo,

6 counsel.

7 MR. SILBERT: Oh.

8 MR. GORDON: The memo is four pages, and

9 that's one of the --

10 Q. That's the -- the main thrust of the memo;

11 correct?

12 MR. NUNLEY: Objection as to form.

13 A. That is the subject of the memorandum.

14 Q. And you note that you're -- what you're

15 proposing to do is to carry out biological research.

16 I direct your attention to page two, middle of the

17 page.

18 A. In a general sense, yes.

19 Q. Okay. You're --

20 And you note in this memo that your proposal to

21 carry out biological research and testing may seem to

22 be a radical departure from previous policy and

23 practice; correct?

24 MR. NUNLEY: Objection, fairness and

25 completeness.

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1 A. I have only a vague recollection of what I meant  
2 when I wrote that.

3 Q. In 1968, when you wrote this memo, it was your  
4 understanding that the policy and practice had been  
5 to not do biological research and testing; correct?

6 MR. NUNLEY: Objection, vague.

7 A. This is in 1968. You're --

8 Now are you referring to the '64 --

9 Q. I'm referring to 19 --

10 Up to 1968, the policy and practice had not --  
11 had -- had been to not carry out biological research  
12 and testing.

13 MR. NUNLEY: Objection.

14 Q. Right?

15 A. In-house.

16 Q. In-house.

17 And you were arguing in this memo that at least  
18 American Tobacco was doing that already; right?

19 A. Yes.

20 Q. Okay. And you were advocating that Philip  
21 Morris start doing it too; right?

22 A. Yes.

23 MR. NUNLEY: "Doing it" being --

24 MR. GORDON: Biological research and  
25 testing in-house.

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1 Q. Right?

2 A. I don't recall the in-house.

3 Q. I don't either. That's -- you appended that a  
4 little bit later. What you were proposing -- well  
5 let's clarify.

6 You were proposing a radical departure from the  
7 practice -- previous policy and practice of carrying  
8 out biological research and testing.

9 MR. WEIL: Objection.

10 MR. NUNLEY: Objection. That mis --  
11 mischaracterizes the document.

12 MR. SILBERT: I think, yes, misstates the  
13 document. I object.

14 A. Well you're -- you're emphasizing the term  
15 "radical departure," and I used that term. We were  
16 expert in the field of chemistry and physics and  
17 tobacco-processing technology, that's the type of  
18 work we were doing. Initially we did some what you  
19 would broadly maybe describe as biological testing in  
20 studying the problem of irritation, but we did not do  
21 any in-house testing of that nature. We were not  
22 expert in that field. And this was --

23 If, under the broad spectrum you're referring  
24 to, let's say biological work relating to the health  
25 of people, the harmful effects of cigarettes on

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1 humans, that was something which was being covered by  
2 The Council for Tobacco Research, which was a joint  
3 effort of the companies, and there was no point in  
4 our doing it.

5 Now I don't know that -- I don't recall the  
6 details of what these other companies were -- had in  
7 mind. I'm not even sure I knew. But it was clear at  
8 this point that I was sensing that they were  
9 contemplating a level of activity which was over and  
10 above what they had been doing before, and I felt  
11 that we should consider some activity of that sort on  
12 our own. Whether it was in-house or outhouse, I  
13 don't -- I don't recall at this point.

14 Q. So up to 1968 Philip Morris had not been doing  
15 biological -- biological research and testing.

16 A. Well that's a very broad term. We were doing,  
17 for example, studies on irritation, we were doing  
18 studies on mucous flow in trachea of cats, and we  
19 were doing things related to the question of  
20 irritation and coughing. Now you can call that  
21 biological if you like. If you say -- if that comes  
22 under the broad category of biological testing, then  
23 we were doing some of that as far back as 1962 or '3,  
24 as I recall it.

25 Q. In your --

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1           In one of the earlier memos we looked at,  
2   Exhibit 132, you made specific reference in the  
3   handwritten note about the fact that Dr. Burke was an  
4   expert in animal testing. Do you remember that?

5   A.    Yes.

6   Q.    Okay. Philip Morris wasn't doing any animal  
7   testing as of 1968.

8   A.    Absolutely not. Not in house. We were -- we  
9   were doing tests on some animals, again related to  
10   the irritation problem, not regarding -- not relating  
11   to cancer or anything else of that nature.

12           MR. NUNLEY: Corey, before -- before the  
13   next question so there's not a question pending, when  
14   you talk about Philip Morris doing research, do you  
15   mean to imply in-house, or are you including in that  
16   outhouse and other funded research? Because I think  
17   there needs to be some clarification of that. I  
18   don't know whether you mean is it doing it in --  
19   in -- internally or is it -- when you say is Philip  
20   Morris doing research, you mean it more broadly.

21           MR. GORDON: Well I think he's been doing a  
22   good job of explaining what -- what research he's  
23   talking about.

24           MR. NUNLEY: Well I think -- I think your  
25   questions have been vague in that regard, and I

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1 wanted to tell you why I thought that.

2 MR. GORDON: Thank you.

3 BY MR. GORDON:

4 Q. In 1968 you were advocating that Philip Morris  
5 intensify its biological research and testing;  
6 correct?

7 A. I was advocating, in general, steps to become  
8 much more aware of what was going on in the field and  
9 considering doing some work beyond the irritation  
10 work.

11 Q. And one of the reasons you were arguing that  
12 Philip Morris ought to be doing that was because  
13 American Tobacco appeared to be doing that; correct?

14 A. Well that was one of the reasons.

15 Q. Right.

16 A. Not necessarily the main reason.

17 Q. And the reason Philip Morris had not been doing  
18 that type -- the type of research that you were  
19 advocating here prior to 1968 was because there had  
20 been a gentlemen's agreement among the cigarette  
21 companies not to do that; correct?

22 MR. WEIL: Objection.

23 A. No, I don't understand that --

24 You're using a term "gentlemen's agreement," and  
25 I don't know altogether what you mean by that.

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1 Q. Okay.

2 (Plaintiffs' Exhibit 135 was marked  
3 for identification.)

4 BY MR. GORDON:

5 Q. Show you Exhibit 135, document Bates stamp  
6 numbered 1001607055 through 061. This is a  
7 document -- in the upper left-hand corner it's  
8 stamped "DRAFT;" correct?

9 A. It is so stamped.

10 Q. And this is in fact an earlier draft of your  
11 November 15th, 1968 memo to Mr. Goldsmith that's been  
12 marked as Exhibit 134; correct?

13 A. There is --

14 Yes, there seems to be some similarity.

15 Q. Okay. And there's some couple of handwritten  
16 words on this front page -- on the first page.

17 That's your handwriting; correct?

18 A. Where are they?

19 Possibly.

20 Q. Okay. And I direct your attention to page  
21 four.

22 A. Yes, sir.

23 Q. In this draft of the memo you stated, quote, "We  
24 have reason to believe that in spite of gentlemen's  
25 agreement from the tobacco industry in previous years

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1 that at least some of the major companies have been  
2 increasing biological studies within their own  
3 facilities," close quote. Do you see that?

4 A. Yes.

5 Q. Okay. What did you mean by "gentlemen  
6 agreement" when you wrote that in 1968?

7 A. Well I was referring, as I recall it, to the  
8 understanding which I felt or sensed existed between  
9 the companies at the time The Tobacco Research  
10 Institute was established, and that is that since the  
11 companies did not have expertise within their own  
12 research departments, which were relatively  
13 elementary in the 1950s, that research being done in  
14 the general area of smoking and health be done by  
15 experts who were in -- being supported through The  
16 Tobacco Research Institute.

17 I may have coined the word "gentlemen  
18 agreement" in writing this document. But it, in my  
19 mind, was a term I used to express this understanding  
20 between the companies that the company laboratories  
21 in general were not qualified or capable of carrying  
22 out research of the kind that was necessary to  
23 address the question of smoking and health, and that  
24 the industry had set up The Tobacco Research Council  
25 to bring together experts who would address this

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1 question and who would be supported by the industry  
2 for whatever researches they deemed desirable to do  
3 in this field.

4 Q. In 1964 when you made your presentation to the  
5 board of directors, did you tell the board of  
6 directors that you thought your research and  
7 development department was unqualified to do  
8 biological research?

9 A. Well I wouldn't --

10 I don't know that I used those terms. I don't  
11 recall exactly that I said that.

12 Q. Did you feel in 1964 that you were unqualified  
13 to do biological research?

14 A. Well you're using the term "biological research"  
15 to cover a whole host of things. Biological research  
16 can go all the way from plankton to elephants. I  
17 think we have to be more specific in our discussion  
18 of biological research.

19 Now I used the term in a broad sense because I  
20 didn't want to get into the things relating to issues  
21 of smoking such as came out in the Surgeon General's  
22 report. I didn't want to have to --

23 Q. Well what's the type of research that --

24 MR. SILBERT: Excuse me. Can he complete  
25 his answer if he hasn't completed it?

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1 MR. GORDON: I'm sorry.

2 THE WITNESS: Well that's all right. Go  
3 ahead.

4 MR. SILBERT: All right.

5 Q. What's the type of research that you understood  
6 that there was an understanding that the cigarette  
7 companies would not be doing in-house?

8 A. Studying a relationship which might exist  
9 between smoking and diseases such as were tabulated  
10 in the Surgeon General's report.

11 Q. Did you feel that you were unqualified to study  
12 the relationship between smoking and diseases?

13 A. Absolutely.

14 Q. Did you feel that your research and development  
15 department was unqualified to study the relationship  
16 between smoking and diseases?

17 A. Yes.

18 Q. When did you tell -- strike that.

19 Did you ever tell the board of directors that  
20 you felt the Philip Morris research and development  
21 department was unqualified to study the relationship  
22 between smoking --

23 A. I don't recall --

24 Q. -- and diseases?

25 A. -- what I told them --

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1 Q. Did there --

2 A. -- in this respect.

3 Q. Did there ever come a point in time where you  
4 believed Philip Morris was qualified to study the  
5 relationship between smoking and diseases?

6 MR. NUNLEY: Objection, vague.

7 A. I don't recall that we ever -- were ever really  
8 qualified to study this topic. We did some  
9 experiments which related to attempts to bioassay  
10 products with regard to biological activity. The --  
11 the -- the challenge of the research director always  
12 was that if you thought you had an improved product  
13 from the point of view of maybe less-hazardous  
14 cigarette, how would you demonstrate that? How would  
15 you prove it? How would you do tests that would show  
16 this was really an improved product?

17 Q. In 1968, when you were writing this memo, you  
18 believed that certain other cigarette companies were  
19 violating this understanding by doing biological  
20 studies within their own facilities; correct?

21 MR. NUNLEY: Objection.

22 A. I don't know that I would use the term  
23 "violating." They were -- they were doing things in  
24 this general field. I don't know what they were  
25 doing. The only reference --

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1 Well there are some references to what other  
2 companies were doing in a broad sense; for example,  
3 American hiring Arthur Burke, but specifically what  
4 they were doing I don't know. I don't recall.

5 (Plaintiffs' Exhibit 136 was marked  
6 for identification.)

7 BY MR. GORDON:

8 Q. Exhibit 136 is a document bearing Bates stamp  
9 number 1000220888 through 891, memorandum dated  
10 October 3rd, 1969. This is a memo from R. D.  
11 Carpenter to you; correct, sir?

12 A. That's what it says.

13 Q. Who's R. D. Carpenter?

14 A. He was on the -- the research department staff.

15 Q. And he's summarizing a visit that he made to R.

16 J. Reynolds; is that correct?

17 A. I don't recall. I don't know what the  
18 circumstances of this were. I don't know what led to  
19 the memorandum.

20 Q. Well in the first paragraph he says that "Dr.  
21 Nielsen showed the R. J. Reynolds biological  
22 facilities to Arthur Burke of American Brands and to  
23 me on Wednesday, October 1st;" right?

24 A. That's what it says.

25 Q. And then the memorandum goes on to describe the

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1 R. J. Reynolds biological facilities; correct?

2 A. I don't know whether it does or not.

3 Q. Well why don't you read it.

4 A. Well I -- I'm not familiar with the facilities.

5 I can't say anything about the accuracy of this

6 memorandum.

7 Q. I'm just asking you what the memo purports to

8 say, whether it's accurate or not.

9 A. It purports to say that.

10 Q. Okay. And in fact it attaches a diagram showing

11 the layout; right? The last page of the -- the last

12 two pages of this document is a diagram showing the

13 layout of R. J. Reynolds biological facilities;

14 correct?

15 A. I don't know whether it's their facility or

16 not. There is a diagram of a layout.

17 Q. What did --

18 In 1969, what did you understand this -- this

19 diagram to be that says "R. J. REYNOLDS BIOLOGICAL

20 FACILITIES" at the top?

21 A. I have no recollection of the memorandum and I

22 don't recall what kind of an understanding I had.

23 The diagram -- the -- the --

24 You can read it as well as I.

25 Q. Okay. Well do you have any independent

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1 recollection that -- that --

2 A. Absolute --

3 Q. Let me finish my question.

4 A. Absolutely not.

5 MR. SILBERT: Let him finish his question.

6 A. Absolutely not.

7 MR. SILBERT: Let him finish his question.

8 THE WITNESS: I'm sorry.

9 Q. Do you have any independent recollection to  
10 dispute the notion that this was a diagram drawn by  
11 Mr. Carpenter of the R. J. Reynolds biological  
12 facilities that he was shown on October 1st, 1969?

13 MR. NUNLEY: Objection.

14 A. I have no --

15 MR. SILBERT: I object to that -- the form  
16 of that question. The witness just said he has no  
17 recollection of this memorandum.

18 A. I have no recollection to dispute or to confirm.

19 Q. Okay. Does it surprise you as you sit here  
20 today that you would have gotten a memo from one of  
21 your employees describing a visit to the R. J.  
22 Reynolds biological facilities?

23 MR. SILBERT: Objection.

24 MR. WEIL: Objection.

25 MR. SILBERT: It's conclusory.

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1 A. Mr. Gordon, I probably got half a dozen or 10  
2 memoranda a day on the average for 17 years. I -- I  
3 have no recollection of this memorandum.

4 Q. I understand. My question is: If you -- if --  
5 If this memo was given to you in 1969, do you  
6 have any reason today to think that you would --  
7 that -- that you -- your reaction to it would have  
8 been to say this is extraordinary, this is something  
9 I -- I have -- I -- I'm not interested in seeing?

10 MR. NUNLEY: Objection.

11 MR. WEIL: Objection.

12 MR. SILBERT: Speculative, conclusory.

13 A. That would be speculation. I have no  
14 recollection of the memo and I don't know anything  
15 about -- I don't recall anything about a reaction to  
16 the memo, which is what you're asking me.

17 Q. No. My -- my question today is: Do you have  
18 any reason to think that in 1969 you would have been  
19 surprised to receive such a memo?

20 MR. WEIL: Objection.

21 MR. SILBERT: Same objection, speculative  
22 and conclusory.

23 A. I don't have any reason to react one way or the  
24 other at this point. That was only 28 years ago.

25 (Plaintiffs' Exhibit 137 was marked

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1                   for identification.)

2 BY MR. GORDON:

3 Q.   Showing you Exhibit 137, bearing Bates stamp  
4 number 1001882748 through 749, a memo dated December  
5 15th, 1969, this is a memo from L. Weissbecker to R.  
6 D. Carpenter; correct?

7 A.   That's what it says.

8 Q.   And you were carbon copied on it; correct?

9 A.   Yes.

10 Q.   And the second page shows your -- your received  
11 stamp indicating you received it January 2nd, 1970?

12 A.   My second page is -- is faulty. It's an inverse  
13 copy of the first page.

14 Q.   My understanding is that the photo -- that the  
15 copy that you're looking at is a production of the  
16 back side of the paper. So it's really a one-page  
17 document if you imagine that you take the second  
18 page --

19 A.   All right, I'm sorry.

20 Q.   -- and put it back to back.

21 A.   I thought you referred to the second page.

22 Q.   I am referring to the second page, because it's  
23 my understanding that the received stamp --

24 A.   Oh, I'm sorry.

25 Q.   -- was stamped on the back of -- of each page,

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1 and that's why we get a photocopy --

2 A. I see. Okay.

3 Q. Okay. And that was your standard practice,

4 to -- for your secretary to stamp --

5 A. My secretary stamped them, yes.

6 Q. Okay. And those are your initials in the upper

7 right corner of the front page; correct?

8 A. They would appear to be, yes.

9 Q. Was that your practice, to write your initials  
10 when you'd read a memo?

11 A. Yes.

12 Q. Okay. And in this memo, Weissbecker is

13 summarizing a conversation he had with a Dr. Price

14 from R. J. Reynolds at a meeting; correct?

15 MR. NUNLEY: Objection.

16 A. That's what the memorandum says.

17 Q. Okay. And Weissbecker is alerting Carpenter to

18 a statement that Dr. Price indicated that R. J.

19 Reynolds was doing chronic cigarette-smoke exposure

20 studies with rats; correct?

21 MR. SILBERT: I object.

22 MR. WEIL: Objection.

23 MR. SILBERT: I object to that.

24 A. You're referring to what the memo says.

25 Q. That's what the memo says; right?

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1 A. Yes.

2 Q. Okay. And it also says that the animals  
3 received up to 500 cigarettes and emphysema was  
4 produced.

5 A. Well I have no direct knowledge of this.

6 Q. Okay. But that's what the memo says.

7 A. I don't recall it.

8 Q. Do you remember --

9 A. I can read the memo as well as you, sir.

10 Q. Do you remember in 1969 when you read this memo  
11 being surprised that R. J. Reynolds --

12 A. I have no --

13 Q. Let me finish my question.

14 MR. SILBERT: Let him finish the question.

15 Q. Do you remember in 1969 when you read this memo  
16 being surprised that R. J. Reynolds had produced  
17 emphysema in rats through inhalation tests?

18 MR. SILBERT: Objection, conclusory.

19 A. I have no recollection whatsoever of the  
20 memorandum or any reaction I might have had to it.

21 Q. Do you remember doing anything to find out  
22 whether R. J. Reynolds in fact had produced emphysema  
23 in rats through inhalation tests?

24 A. No, sir.

25 Q. Do you remember alerting anyone in upper

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1 management at Philip Morris to this memo indicating  
2 that R. J. Reynolds had produced emphysema in  
3 inhalation tests with rats?

4 A. No, sir.

5 Q. Do you --

6 Did you undertake any activities as director of  
7 research for Philip Morris to see if Philip Morris  
8 cigarettes produced emphysema in rats?

9 A. I don't recall anything of the sort.

10 Q. Did you do anything to alert the public to the  
11 fact that R. J. Reynolds, in -- in chronic  
12 cigarette-smoke-exposure study with rats, had  
13 produced emphysema?

14 MR. SILBERT: I object, that's an unfair  
15 question.

16 MR. NUNLEY: It also assumes facts that are  
17 not in evidence, Corey.

18 MR. GORDON: Can you answer the question?

19 A. I have no recollection with regard to the memo.

20 Q. Okay. My question is not specifically the memo,  
21 my question is: Did you ever undertake any  
22 activities to alert the public to the representation  
23 in this memo that R. J. Reynolds had produced  
24 emphysema in smoke -- chronic  
25 cigarette-smoke-exposure study with rats.

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1 MR. SILBERT: Object.

2 A. That's a hypothetical question. It's a  
3 hypothetical situation that you're describing. The  
4 answer is -- is -- is negative. I -- I have never  
5 seen the memo, I have no recollection of it, I have  
6 no recollection of taking any actions or doing  
7 anything in response to the memo -- or to my reading  
8 of the memo.

9 Q. Is your testimony now you've never seen this  
10 memo?

11 A. I think I saw it in 1969, yes.

12 Q. Okay. Apparently seeing a memo about emphysema  
13 and smoke-exposure studies in 1969 was not a  
14 memorable event for you.

15 MR. SILBERT: I object to that. We're  
16 talking about 28 years. That's really unfair, Mr.  
17 Gordon.

18 A. That's a hypothetical question in that sense.  
19 You're asking -- you're saying -- you're suggesting  
20 that I reacted one way or the other. At this point I  
21 have no memory or recollection of this memorandum or  
22 this piece of paper.

23 Q. Did there ever come a time when you believed  
24 that emphysema was caused by cigarette smoking?

25 A. I don't recall it.

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1 Q. As you sit here today do you believe emphys --  
2 cigarette smoking causes emphysema?

3 MR. SILBERT: I object to that.

4 A. Are you asking me about a belief?

5 Q. I'm asking you as your -- your opinion as a  
6 scientist.

7 A. I --

8 This is not my area of expertise. I have no  
9 idea whether em -- smoking causes emphysema or not.  
10 It's not my -- that's not my -- my thing.

11 Q. Did you ever become aware of any animal  
12 inhalation studies that demonstrated that smoking  
13 caused emphysema?

14 A. No.

15 THE REPORTER: We have to change tape. Off  
16 the record, please.

17 (Recess taken.)

18 (Plaintiffs' Exhibit 138 was marked  
19 for identification.)

20 BY MR. GORDON:

21 Q. Show you Exhibit 138, marked Bates stamp number  
22 10000855768 through 770, memorandum dated September  
23 9th, 1969.

24 Memo from you to Mr. Goldsmith; correct?

25 A. It would appear so.

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1 Q. And you are --

2 In this memo you are summarizing data from some  
3 studies in Great Britain; correct?

4 MR. SILBERT: Read it.

5 A. Yes.

6 Q. And the studies that you were -- you were  
7 studying are referred to as mouse skin-painting  
8 experiments; correct?

9 A. Yes.

10 Q. Where a condensate from the tobacco was painted  
11 on the backs of mice. Is that how the test is done?

12 MR. NUNLEY: Objection.

13 A. Yes.

14 Q. Okay. And one of the --

15 MR. NUNLEY: Can I -- Corey, can I just --

16 You say condensate from the tobacco. You mean  
17 from the smoke.

18 MR. GORDON: Yes, I meant the smoke.

19 Q. Is that what you understand --

20 A. I'm sorry.

21 Q. No, that's all right.

22 A. I understood it.

23 Q. You understood it to be tobacco smoke. Okay.

24 Thanks for that clarification.

25 And one of the -- one of the conclusions that

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1 you drew from this study was that there was a  
2 dose/response relationship in these studies;  
3 correct? Point number one.

4 A. I'm summarizing what was done at Harrogate.

5 Q. Right. In Britain.

6 A. In Britain.

7 Q. By the tobacco industry there.

8 A. Yes.

9 Q. And these studies showed a dose/response  
10 relationship.

11 MR. NUNLEY: Objection.

12 Q. Right?

13 A. That's what the memorandum says.

14 Q. And so the jury understands what that means,  
15 that means that the more condensate that's applied to  
16 the skin on the mice, the more cancerous tumors that  
17 the mice get; right?

18 A. That would be a definition of dose/response.

19 Q. Okay. And that's -- that's what you understood  
20 these studies to be showing; correct?

21 A. Yes.

22 Q. And you advo --

23 You were advocating in this memo to Mr.

24 Goldsmith that Philip Morris start use -- start

25 testing its own products with a mouse skin-painting

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1 test; correct?

2 A. Well --

3 MR. SILBERT: Are you purporting to base  
4 that on the memo, or his belief -- or his  
5 recollection?

6 MR. GORDON: The memo.

7 MR. SILBERT: The memo? Well where in  
8 the --

9 A. It --

10 MR. GORDON: The conclusion on page two.

11 A. That would be implied in the memorandum.

12 Q. So in 1969 you're advocating that Philip Morris  
13 start testing its own products with the mouse  
14 skin-painting experiment; correct?

15 A. I was advocating that we consider it, yes.

16 Q. Well, you say we should start testing our  
17 products now because it will be two years before we  
18 know the answer; right?

19 A. Well the test takes two or three years to  
20 perform, yes.

21 Q. Okay. You weren't saying we should consider it,  
22 you were saying we should start doing it; right?

23 A. In 1969? Yes.

24 Q. How often did you meet personally with Joseph  
25 Cullman?

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1 A. Oh, I have no idea.

2 MR. NUNLEY: What timeframe, please?

3 MR. GORDON: Any timeframe.

4 Q. Was that --

5 Was that a common daily experience or was --

6 A. Oh, not daily. I was in Richmond, he was in New

7 York. Occasionally he came to Richmond,

8 Occasionally I went to New York.

9 Q. Was it --

10 So it was not an ordinary course of events when

11 you'd meet with Mr. Cullman.

12 MR. NUNLEY: Objection,

13 mischaracterization.

14 Q. Joseph Cullman.

15 A. Joseph Cullman.

16 MR. SILBERT: Objection, vague.

17 A. Well I had very few scheduled meetings with him,

18 if that's what you mean.

19 Q. Okay.

20 (Plaintiffs' Exhibit 139 was marked

21 for identification.)

22 BY MR. GORDON:

23 Q. Exhibit 139 is a document Bates stamp number

24 10000216742, memo dated February 24th, 1970.

25 This memo is from Mr. Joseph Cullman to you;

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1 correct?

2 A. Yes.

3 Q. And it's got your initials in the upper

4 right-hand corner; correct?

5 A. Yes.

6 Q. Okay. And Mr. Cullman makes reference to a

7 conversation he had with you in Richmond last

8 Thursday, from when this memo was dated; right?

9 A. That's what it says.

10 Q. Okay. And he states in this memo that he hopes

11 that you, meaning Mr. Wakeham, Dr. Wakeham, quote,

12 "feel it will serve to clear the air somewhat on the

13 strong stand I have taken in connection with certain

14 kinds of research activities by Philip Morris." Do

15 you see that?

16 A. Yes, I see it.

17 Q. Do you recall this conversation?

18 A. No, I do not recall the conversation.

19 Q. Do you recall sometime in early 1970 that you

20 and Mr. Joseph Cullman had a difference of view as to

21 what the research activities Philip Mor -- Philip

22 Morris should be doing were?

23 A. I do not recall specifics regarding it. This

24 memorandum, as I recall it, was in the context of our

25 consideration of doing work in the area of inhalation

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1 toxicology.

2 Q. You were advocating that you do it; correct?

3 A. Yes.

4 Q. And Mr. Cullman was opposed to it; correct?

5 A. I don't recall that he was, quote, opposed,  
6 unquote, to it. Let's say he might not have been  
7 enthusiastic about it.

8 Q. And in the second paragraph he states that he  
9 feels that, quote, "our present policy is the correct  
10 one and that the program you are carrying out in  
11 Boston is as far as we should go now." Correct?

12 A. Yes. And I have no recollection of what  
13 he's referred to as the program in Boston.

14 Q. Was it --

15 Was there a time when Philip Morris was carrying  
16 out some contract research in Cambridge,  
17 Massachusetts?

18 A. Yes, there was. We -- we --

19 As I recall, there was some contract research  
20 going on.

21 Q. What kind of research was that?

22 A. I -- I'm not familiar with the details of it.

23 Q. Do you recall now as you read that that Mr.  
24 Cullman was saying that whatever it was you were  
25 talking about that you weren't going -- that they --

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1 that Philip Morris was not going to go any farther  
2 than what was being done in Boston?

3 A. I don't recall the conversation. He --

4 Q. In the next paragraph he refers to the  
5 possibility of getting answers to certain problems on  
6 a contractual basis in Europe. See that?

7 A. Yes.

8 Q. Okay. And he says that it appeals to me and I  
9 feel it presents an opportunity that is relatively  
10 lacking in risk and unattractive repercussions in  
11 this country. See that?

12 A. Yes.

13 Q. That was referring to INBIFO; correct?

14 MR. NUNLEY: Objection, speculation.

15 MR. SILBERT: Same objection.

16 A. No, I don't know what he was referring to. This  
17 was a period during which I was expressing my  
18 feelings, which resulted from maybe 10 years of  
19 thinking about this, that there were serious  
20 inadequacies with regard to the skin-painting test in  
21 terms of being significant of relating smoke  
22 condensate or smoking to disease, and that a much  
23 better test would be one involving inhalation because  
24 that's what the human subject did. He inhaled the  
25 smoke, he didn't have it, the condensate, painted --

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1 painted on his lung or his back. And during the  
2 1960s I came around to the view that a much more  
3 appropriate bioassay or evaluation of product would  
4 involve an inhalation test.

5 We in the late '60s had some inhalation --  
6 preliminary inhalation tests done, and we thought  
7 that it might be more efficient, effective, and  
8 helpful to have them done by a really good, qualified  
9 contract research laboratory, and eventually we came  
10 around to INBIFO as the place where that might be  
11 done.

12 Q. INBIFO is located in Cologne, Germany?

13 A. Yes.

14 Q. Okay. And that work didn't begin until the  
15 '70s; correct?

16 A. About that time, yes.

17 Q. Okay. In early 1970, at the timeframe  
18 encompassed by this memo, Exhibit 139, you were  
19 advocating inhalation toxicology bioassay tests be  
20 done by Philip Morris; correct?

21 A. Yes.

22 Q. And at that point Joseph Cullman III was of a  
23 different view; correct?

24 MR. NUNLEY: Objection, speculation.

25 A. Oh, I -- I wouldn't say --

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1           The implication of the word "different view" is  
2   that he was in opposition to it, doing it. I  
3   wouldn't say that.

4   Q.   Did he agree with you, that that's what  
5   should -- Philip Morris should be doing?

6   A.   There was a period of several years where this  
7   whole subject was developing and under consideration,  
8   and I don't recall Mr. Cullman taking a strong stand  
9   one way or the other with regard to it. I think he  
10   was allowing the discussion to develop and he was  
11   listening to the various people and their points of  
12   view with regard to this.

13   Q.   Again I want to focus on the timeframe at the  
14   very end of 1969 and the very beginning of 1970.

15           At this period in time you were advocating a  
16   research program in the area of inhalation toxicology  
17   that Joseph Cullman was not yet ready to approve;  
18   correct?

19   A.   Well it involved a much more intimate activity  
20   on our part in the general area of bioassay or  
21   evaluating cigarettes for their biological activity  
22   than we had ever undertaken before, and so it did  
23   represent maybe a -- another step in the direction of  
24   engaging in this kind of activity, which certainly  
25   early in the days we were totally naive and

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1 inexperienced in doing, and as the situation  
2 developed during the 1960s we became more familiar  
3 with it, we became more aware of it, and we began to  
4 feel that there was some desirability in making our  
5 own bioassays of our products.

6 Q. And there came a point in time when Philip  
7 Morris undertook these activities; correct?

8 A. Yes.

9 Q. Okay. But in this period of time, and the  
10 period I'm talking about is the very end of 1969 and  
11 the very beginning of 1970, you were urging that  
12 Philip Morris undertake those activities, and Joseph  
13 Cullman at that -- in that period of time was saying  
14 "Not yet."

15 MR. NUNLEY: Objection.

16 MR. SILBERT: Asked and answered.

17 MR. NUNLEY: Form.

18 MR. SILBERT: Objection, asked and  
19 answered.

20 Q. Correct?

21 A. I don't recall specific statements on his part.

22 Q. Okay. Do you recall a conversation you had with  
23 Mr. Cullman during this period of time when you  
24 advised him that you had information that R. J.  
25 Reynolds was doing in-house biological testing?

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1 A. I don't recall it.

2 Q. Do you recall Mr. Cullman, Joseph Cullman,  
3 calling Mr. Galloway, the -- the head of RJR, and  
4 asking him if he had -- if RJR was going biological  
5 testing?

6 A. I -- I don't recall any -- any events of that  
7 nature.

8 Q. And you don't recall --

9 And it's your testimony here today under oath  
10 that you don't recall Mr. Cullman, then, telling you  
11 that he had talked to Galloway at RJR who said they  
12 weren't doing biological testing.

13 A. I don't remember that.

14 Q. And you don't recall telling Mr. Cullman in  
15 response to that that you actually had floor plans of  
16 RJR's biological testing laboratories.

17 A. I don't remember that.

18 Q. And you don't recall Mr. Cullman then calling  
19 Galloway back and telling him that we had -- that  
20 Philip Morris had this information?

21 A. I don't remember that.

22 MR. WEIL: Objection.

23 Q. And you don't remember Mr. Cullman telling you  
24 that Galloway went down to the lab and confirmed  
25 what -- the information that you had given them.

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- 1 A. I don't remember any such events.
- 2 Q. And you don't remember Mr. Cullman telling you
- 3 that Galloway shut down the lab --
- 4 A. No, sir.
- 5 Q. -- at RJR.
- 6 A. I do not recall.
- 7 Q. Okay. From time to time you would meet with
- 8 individuals from cigarette companies in England;
- 9 correct?
- 10 A. Yes.
- 11 Q. Including Mr. Felton from B.A.T.?
- 12 A. British American Tobacco are you referring to?
- 13 Q. Right.
- 14 A. Yes.
- 15 Q. Do you remember a Mr. Felton?
- 16 A. Yes.
- 17 Q. And do you recall telling Mr. Felton in 1970
- 18 that you had been urging Mr. Cullman to permit Philip
- 19 Morris to do in-house biological work?
- 20 A. I don't recall that.
- 21 Q. Okay. Do you recall telling Mr. Felton that
- 22 when Mr. Cullman first mooted this idea of doing
- 23 in-house biological work, you told him that there
- 24 was -- you were told, you, Mr. Wakeham, were told
- 25 that there was a tacit agreement between the heads of

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1 the U.S. companies that this would not be done?

2 A. I don't recall the conversation with Mr. Felton.

3 Q. Do you recall the conversation with Mr. Mor --

4 Mr. Cullman where he told you that there was a tacit  
5 agreement between the heads of U.S. companies that  
6 in-house biological work would not be done?

7 A. No.

8 Q. And do you recall telling Mr. Felton that when  
9 Mr. Cullman had told you this, you told him that  
10 Reynolds, Lorillard and American were all undertaking  
11 some, and that Liggett & Myers had never been party  
12 to this agreement?

13 A. No.

14 Q. Okay. And do you recall telling Mr. Felton that  
15 Cullman had been incredulous and had phoned Galloway,  
16 the president of RJR?

17 A. No.

18 Q. Do you recall telling Mr. Felton that -- that  
19 Galloway had denied Reynolds was doing any bioassay?

20 A. No.

21 Q. Do you recall telling Mr. Felton that when Mr.  
22 Cullman told you that, your response was to quote  
23 Reynolds' work on the Senkus smoking machine and to  
24 claim that you had floor plans showing the outlines  
25 of the area?

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1 A. No.

2 Q. Okay. And do you recall telling Mr. Felton that  
3 this information had been relayed by Cullman to  
4 Galloway?

5 A. No.

6 Q. And do you recall telling Mr. Felton that  
7 Galloway had visited the Reynolds research department  
8 and found that it was substantially true?

9 A. No.

10 Q. Do you recall telling Mr. Felton that there had  
11 been a sudden reorganization at Reynolds resulting in  
12 the closure of the biological section?

13 A. No.

14 Q. Is it your testimony that you didn't say any of  
15 those things to Mr. Felton, or you just don't  
16 remember?

17 A. I don't remember.

18 Q. Do you remember a period of time in the early  
19 19 --

20 MR. NUNLEY: Let me just state, Corey,  
21 excuse me, I object or will object to trial to that  
22 entire line of questioning as being based on facts  
23 that are not in evidence.

24 Q. Did you recall that in early 1970, the R. J.  
25 Reynolds shut down its in-house biological testing

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1 facility?

2 A. I don't recall it.

3 MR. GORDON: This is a logical place to  
4 break, break for lunch.

5 THE REPORTER: Off the record, please.

6 (Luncheon recess taken at 12:20 o'clock  
7 p.m.)

8 (Plaintiffs' Exhibit 140 was marked  
9 for identification.)

10

11

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1 AFTERNOON SESSION

2 (Deposition reconvened at 1:36 o'clock  
3 p.m.)

4 BY MR. GORDON:

5 Q. Dr. Wakeham, before the break Mr. Nunley made an  
6 objection to a line of questioning relating to your  
7 conversation with Mr. Felton, and over the break I  
8 decided that in fairness to you and in response to  
9 that objection I would put into evidence Exhibit 140,  
10 which I've shown you. This is a memorandum produced  
11 by B.A.T. in this deposition -- in this litigation,  
12 bears Bates stamp number 110315968 through 971.

13 I know you haven't had a chance to read it  
14 completely in the last few moments, but my -- my --

15 The first simple question is whether you've ever  
16 seen this document before?

17 A. No.

18 Q. Okay.

19 MR. NUNLEY: Corey, I just -- excuse me. I  
20 just object to the -- I don't think you meant to say  
21 you're putting it into evidence. You've marked it as  
22 an exhibit --

23 MR. GORDON: Right.

24 MR. NUNLEY: -- in the deposition.

25 MR. GORDON: Right.

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1 MR. GROSSI: Is this one of the ones that  
2 was on the pre-designation list?

3 MR. GORDON: No.

4 BY MR. GORDON:

5 Q. I'd like to in particular direct your  
6 attention --

7 You're certainly free to read the whole thing,  
8 but what I particularly want to question you about is  
9 page two, the -- the bottom half of it, as it relates  
10 to the line of questioning that we did before the  
11 break regarding any conversation you might have had  
12 with Mr. Felton regarding conversations you had with  
13 Mr. Cullman.

14 MR. NUNLEY: Corey, I'm going to object to  
15 the questioning based on a document that wasn't  
16 pre-designated for us.

17 I mean you just nod your head and that really  
18 doesn't cure it.

19 MR. GORDON: Well your objection is noted,  
20 counsel.

21 MR. NUNLEY: Well but I -- I mean the fact  
22 that you note my objection doesn't cure the fact that  
23 you're asking the witness, and you carried on before  
24 the break, about a document that wasn't designated.

25 MR. GORDON: Yeah. We're entitled to

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1 introduce impeachment documents, counsel.

2 MR. NUNLEY: Can you point me to that in  
3 the record, Corey, that it says you don't have to  
4 include impeachment documents in discovery  
5 depositions?

6 MR. GORDON: Yeah. In the  
7 pre-designation?

8 MR. NUNLEY: Yes.

9 MR. GORDON: It's in the Case Management  
10 Order. And I'm -- and I'm not going to take any more  
11 time on the record to go over that. You've objected  
12 to it and the objection stands, and if the court  
13 finds your objection is valid, then this line of  
14 questioning will -- will be for naught.

15 MR. GROSSI: Well we'll be happy to look.  
16 Can you tell us which paragraph?

17 MR. GORDON: No, I don't have it in front  
18 of me. And it was the subject of a lengthy  
19 back-and-forth stipulated order that may even be a  
20 separate amendment. Mr. Silfen from your office was  
21 involved in it and drafted the language.

22 MR. SILBERT: There's language here on page  
23 19, it says, "Except by order of the Court, upon good  
24 cause shown, a document which has not been  
25 pre-designated in accordance with the foregoing

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1 procedures may not be shown to the witness at the  
2 deposition."

3 MR. GORDON: Yeah. Counsel, I'm not going  
4 to waste any more time because you -- you put me on a  
5 very limited time schedule. There's an amendment to  
6 the order which was worked out by the parties after  
7 that order came out that -- that permits use of  
8 documents for impeachment, and I remember Mr. Silfen  
9 went back and forth quite a bit on what the  
10 definition of impeachment was. If you want to find  
11 out the details, he's your partner, why don't you  
12 give him a call.

13 MR. NUNLEY: Corey, I would --

14 MR. GROSSI: Well let's do that.

15 MR. GORDON: You go ahead. I'm going to  
16 continue my examination. I would be much more  
17 flexible about taking time out to deal with this --

18 MR. GROSSI: The reason -- the reason I  
19 bring it up, Mr. Gordon, is that you apparently  
20 decided to do this over lunch hour and -- and we  
21 weren't notified, so I don't think it's fair to  
22 suggest that by trying to figure something out for a  
23 minute or two or three, we're wasting time.

24 MR. GORDON: Well, no.

25 MR. GROSSI: You could have brought this

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1 up --

2 For example, the record won't reflect because we  
3 weren't on the record, we sat here about 15 minutes  
4 and had a nice little casual conversation about  
5 things, and you never once mentioned that you were  
6 going to do this. If you had, perhaps we could have  
7 taken that time.

8 MR. GORDON: Well I don't know what you're  
9 talking about. We didn't have a conversation about  
10 anything, you and I, sir.

11 But the point is, your lack of familiarity with  
12 the court's orders is not going to delay this  
13 deposition where I've been given an absolute deadline  
14 because of this witness's age and health, so I'm  
15 going to just move -- move forward with my  
16 examination.

17 BY MR. GORDON:

18 Q. Direct your attention to the middle of page two  
19 and ask that you read the -- the -- all of the  
20 paragraphs under what says "Philip Morris Affairs."

21 (Discussion off the stenographic record.)

22 MR. GROSSI: Just for record, I tried to  
23 reach Mr. Silfen right now in the room here, and he's  
24 out of town taking a deposition in another case.

25 So --

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1           MR. NUNLEY: Corey, while he's reviewing  
2 that, I'll tell you that I'm going to let this line  
3 of questioning go forth based on your representation  
4 to me that there's an amendment to the protective  
5 order that says that you don't need to designate  
6 impeachment documents.

7           To be honest with you, I don't understand how  
8 this document differs from any other document in the  
9 way you're using it. What makes this impeachment?  
10 What makes the other 14 documents you showed him this  
11 morning something other than impeachment?

12           MR. GORDON: Just let me know when you're  
13 ready, Dr. Wakeham.

14           MR. FALKENSTEIN: Mr. Gordon, are you  
15 representing that the Case Management Order provision  
16 that says that no pre-designated documents could be  
17 introduced at a deposition has been vacated or that  
18 it has been rescinded by the judge?

19           MR. GORDON: I don't think it says that,  
20 counsel.

21           MR. FALKENSTEIN: No, I'm just asking you  
22 if you --

23           MR. GORDON: I don't think that the Case  
24 Management Order says that.

25           MR. FALKENSTEIN: No, I think as -- as

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1 co-counsel just read, that -- that no -- that no  
2 document that hasn't been predesignated can be shown  
3 to a witness at a deposition. Are you saying that  
4 that provision no longer exists or is no longer in  
5 force and effect?

6 MR. GORDON: I'm telling you that there is  
7 a provision ordered by Judge Fitzpatrick that permits  
8 the introduction at depositions of documents that had  
9 not been pre-designated when the document is  
10 introduced for purposes of impeachment.

11 MR. FALKENSTEIN: And it trumps the other  
12 provision that was just read into the record.

13 MR. GORDON: Yes.

14 MR. FALKENSTEIN: I also object on behalf  
15 of CTR.

16 MR. GROSSI: Counsel, we're not expert in  
17 the order as you apparently are. I only note that  
18 there is an amendment here dated as recently as March  
19 20th, 1996 that does seem to amend the original  
20 language, but does it with respect to matters other  
21 than impeachment and does require the  
22 pre-notification, unless, and I'm looking at here,  
23 the parties -- party noticing the deposition may also  
24 use at the deposition documents of which the party  
25 first becomes aware through testimony at the

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1 deposition itself. I assume you're not relying on  
2 that provision.

3 MR. GORDON: No. There is a provision for  
4 impeachment.

5 MR. GROSSI: Well again I only ask that you  
6 advise us where that is so we can end this discussion  
7 and -- and get on with it.

8 MR. GORDON: Well you know what? If I'm  
9 wrong, then my whole line of questioning is -- is  
10 going to the inadmissible. So you've preserved your  
11 objection. Let's stop wasting time. Let's go  
12 forward.

13 MR. GROSSI: We haven't wasted a moment,  
14 because we've only been talking while the -- while  
15 the doctor has looked at the document which he's  
16 never seen.

17 Q. Okay. Are you done, doctor?

18 A. I have seen the document.

19 Q. Now that you've had an opportunity to study it,  
20 I just want to ask you again: Do you recall ever  
21 seeing this document?

22 A. I have no memory of this whatsoever.

23 Q. No memory of ever seeing the document.

24 A. Of the document or the meeting.

25 Q. Okay. Well then the --

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1           You've jumped ahead, but I just want to make  
2 clear the -- what the question is that we're -- that  
3 we're asking. Specifically the paragraphs in this  
4 document, Exhibit 140, that begin on the page two and  
5 carry through to the top of page three regarding a  
6 discussion between you and Mr. J. Cullman, you have  
7 no recollection as you sit here today of the  
8 substance of what's set forth in those paragraphs; is  
9 that correct?

10 A. I do not remember such discussions.

11 Q. And by "such discussions," I want to be clear  
12 because --

13 A. Well the kind that are described here on this  
14 paragraph.

15 Q. Okay. You had --

16           You don't recall the -- whether these  
17 discussions described on the -- in these paragraphs  
18 happened or not.

19           MR. NUNLEY: He has answered your question  
20 the way you're asking it, Corey. You can't ask to  
21 be --

22           MR. GORDON: Well I want to --

23           MR. NUNLEY: Excuse me. You can't ask to  
24 be more specific in your questions.

25 Q. Okay. I want to be clear that there -- I mean

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1 there are two conversations that we -- that you could  
2 be interpreting. One could be the conversation you  
3 had with Mr. Felton, the other is the conversation  
4 summarized here with Mr. Cullman. And I want to be  
5 sure that what we're saying is you don't remember the  
6 conversation with Mr. Cullman that's referenced here.

7 A. I do not remember the conversation with Mr.  
8 Cullman that is apparently referred to in this  
9 document.

10 Q. Okay.

11 MR. NUNLEY: And Corey, I object to your  
12 question. You say in the question one could be a  
13 conversation you had with Mr. Felton. He's not  
14 testified he's had a conversation with Mr. Felton.  
15 You're -- you're stating that as a matter of fact,  
16 and I don't think that's supported by his testimony.

17 MR. GORDON: Well A, he has testified he's  
18 had several conversations with Mr. Felton, and I was  
19 simply trying to -- B, I'm simply trying to clarify  
20 that this whole document is a memo of a meeting with  
21 Dr. Wakeham on says September 10th, 1970, that I  
22 assume was a conversation. And it's that -- I'm  
23 trying to make -- distinguish between the  
24 conversation between Wakeham and Felton on September  
25 10th, 1970, and the conversation between Cullman and

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1 Wakeham that's referenced in this document.

2 MR. SILBERT: I don't -- I don't have a  
3 problem with that, but I -- I think the objection  
4 that was stated by Chip is correct in that Mr.  
5 Wakeham, my recollection is, did not testify that he  
6 recalled a specific conversation with Mr. Felton that  
7 led to this memorandum.

8 MR. GORDON: Well okay. Now I'm -- now I  
9 am confused. That's what I'm trying to clarify and  
10 I -- and we obviously have different understandings.  
11 Q. I apologize for doing this again, Dr. Wakeham.  
12 We -- let's start. You don't recall having a  
13 conversation with Dr. -- with Mr. Felton on September  
14 10th, 1970; is that correct?

15 A. No, sir.

16 MR. SILBERT: I think that clarifies it.

17 Q. And you also don't recall the details of any  
18 conversations with Mr. Cullman that are memorialized  
19 in this memo; correct?

20 A. Right.

21 Q. Okay. And having read this, it doesn't refresh  
22 any aspect of your -- of your memory about --

23 A. No.

24 Q. -- any --

25 A. No, this --

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1 Q. -- conversations Mr. Cullman may have shared  
2 with you about having talked with Mr. Galloway at  
3 RJR; correct?

4 A. I don't recall any of this.

5 This is 27 years ago. I made many trips. I had  
6 occasional conversations with Felton during the  
7 period and during -- of my tenure with Philip Morris,  
8 and with Mr. Cullman during my tenure with Philip  
9 Morris, but I do not recall these conversations.

10 Q. Okay. You indicated this morning that one of  
11 the -- that part of your understanding of the basis  
12 for the cigarette industry's understanding about what  
13 research it would and would not do involved The  
14 Tobacco Institute Research Council which later became  
15 known as C -- as Counsel for Tobacco Research?

16 MR. FALKENSTEIN: I need to object based on  
17 a mischaracterization.

18 MR. SILBERT: Object to the form.

19 Q. Do you recall that --

20 A. What do you mean by -- you're --

21 You're talking about The Council for Tobacco  
22 Research?

23 Q. The Council for Tobacco Research was originally  
24 called The Tobacco for -- Tobacco Industry Research  
25 Council.

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1 A. Yes, it was. Yes, yes, yes. No.

2 MR. FALKENSTEIN: I object.

3 A. Well --

4 MR. FALKENSTEIN: For the record, it's  
5 Tobacco Research Industry Committee.

6 MR. GORDON: Okay.

7 Q. TIRC became CTR; right?

8 A. Yes.

9 Q. And it's the same organization, just a change in  
10 names.

11 A. Well I don't know what changes were made when  
12 the name change took place, if there were some.

13 Q. Okay.

14 A. I wasn't that familiar with it.

15 Q. Your understanding back in the '60s was that  
16 the -- that the tobacco industry understanding  
17 with -- with respect to research was based on the  
18 belief that TIRC was the better place to conduct  
19 biological research than through the individual  
20 companies; correct?

21 A. Not --

22 MR. FALKENSTEIN: Object as to form.

23 MR. SILBERT: Same objection.

24 A. You keep using the term "biological research."  
25 There was a fairly specific, as I understand it,

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1 charter for The Council -- for the TIRC, which  
2 narrowed their area of activity to certain subjects.  
3 So now if you ask a question relating to the world of  
4 biological research, that covers a lot of territory  
5 which may be outside of their charter.

6 Q. Well what was your understanding of their  
7 charter initially?

8 A. My understanding was that they were to support  
9 research relating to the rather narrow area of  
10 smoking and health.

11 Q. What was the end goal, as you understood it?

12 A. To see if we could maybe enlighten ourselves and  
13 others with regard to any relationship between  
14 smoking and health which might be revealed as a  
15 result of the researches which they were carrying on.

16 Q. By 1968 you had become convinced that TIRC was  
17 not meeting its charge in that area; correct?

18 MR. NUNLEY: Objection as to form.

19 MR. FALKENSTEIN: Same objection.

20 MR. GORDON: You know, the Case Management  
21 Order very clearly says one defendant interposing an  
22 objection is sufficient for all. I've been tolerant  
23 up till now, but this -- this -- this parroting of  
24 objections down the row is getting wearisome and it's  
25 a clear violation of the Case Management Order.

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1           MR. SILBERT: Is your understanding of the  
2 order that that applies to counsel for the witness as  
3 well?

4           MR. GORDON: I haven't said anything to you  
5 because I'm not sure about that, but we've just had  
6 now two defendants make objections. As far as I'm  
7 concerned it -- it can apply, and if you make an  
8 objection, they don't have to, and vice versa. But I  
9 haven't said anything about -- about you objecting --

10          MR. SILBERT: I just wanted to clarify.

11          MR. GORDON: -- independently.

12          MR. FALKENSTEIN: For the record, then,  
13 from now on any objection made by, since there are  
14 only two other defendants, Philip Morris or The  
15 Council for Tobacco Research, one objection will  
16 stand for both parties.

17          MR. GORDON: That's what the Management --  
18 the Case Management Order says. Now I --  
19 Do you remember the question? I assure you I  
20 don't.

21          THE WITNESS: I don't.

22               (Record read by the court reporter.)

23          MR. SILBERT: Objection, conclusory.

24 A. My feelings about TIRC underwent some change  
25 during the years.

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1 MR. GORDON: Well let's -- let's maybe see  
2 if we can frame the metamorphosis here with  
3 documents. Let's mark that one, please.

4 MR. NUNLEY: Objection, move to strike.  
5 (Plaintiffs' Exhibit 141 was marked  
6 for identification.)

7 BY MR. GORDON:

8 Q. Showing you Exhibit 141, a document with Bates  
9 stamp number 1001818588 through 593, memorandum dated  
10 March 7, 1968. It's a memo from you to Mr.  
11 Goldsmith; correct?

12 A. Yes.

13 Q. Have you seen this document recently?

14 MR. SILBERT: I'm going to instruct the  
15 witness not to answer that. Work-product privilege.  
16 Do not answer the question.

17 A. I've been instructed by counsel not to answer  
18 the question.

19 Q. I understand.

20 A. So you --

21 Your question is have I seen the document  
22 recently?

23 Q. That's -- that's my question.

24 MR. SILBERT: And I'm instructing you not  
25 to answer that question.

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1 MR. GORDON: I'm going to move on for now,  
2 but I'm going to reserve my right to contact the  
3 court and get a ruling on whether that's a valid  
4 assertion of privilege.

5 Q. This is a memo in which you were proposing to  
6 Mr. Goldsmith the establishment of a cooperative  
7 research institute established by the tobacco  
8 industry; correct?

9 MR. FALKENSTEIN: Objection as to form.

10 A. Yes.

11 Q. Okay. And you viewed this as an alternative to  
12 TIRC; correct?

13 A. No, sir, not as an alternative. In fact not as  
14 a substitute. A completely different type of an  
15 organization from TIRC or CTR.

16 Q. In explaining your rationale for proposing this  
17 institute to Mr. Goldsmith, you noted that the  
18 industry had adopted an approach in the 1950's to the  
19 smoking-and-health question as what you describe as,  
20 quote, vigorous denial, close quote; isn't that  
21 correct?

22 MR. SILBERT: Objection, incomplete,  
23 fairness doctrine.

24 A. That's the term I used.

25 Q. Okay. And you note that the TIRC was set up to

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1 demonstrate its concern -- the industry's concern for  
2 the cancer problem and to discover by research, if  
3 possible, the truth about smoking and health;  
4 correct?

5 A. That's what I said in the memo.

6 Q. And in 1968 you believed that the TIRC had been  
7 effective in the first part; that is, in  
8 demonstrating the industry's concern about the cancer  
9 problem, but had failed to deal effectively with the  
10 basic scientific aspects of the problem.

11 MR. FALKENSTEIN: Objection.

12 Q. Correct?

13 A. You're quoting from the memorandum. Yes.

14 Q. Okay. Now I'll direct your attention to page  
15 two, second-to-the-last paragraph. In 1968 you  
16 thought that TIRC had produced few, if any, objective  
17 and newsworthy findings to controvert the allegations  
18 of the anti-cigarette zealots; correct?

19 A. That's an opinion I gave, yes.

20 Q. And you were advocating for some sort of middle  
21 ground between no research and a massive research  
22 effort to find the cause of cancer; correct?

23 A. Covering areas beyond that of The Council for  
24 Tobacco Research or TIRC.

25 Q. Okay. Well the --

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1           In 1968 there was no massive effort by the  
2 industry to find the cause of cancer; was there?

3           MR. WEIL: Objection.

4           MR. FALKENSTEIN: Objection.

5 A.    I don't know what you mean by the word  
6 "massive."

7 Q.    Well I'm using your word. What did you mean by  
8 the word "massive?"

9 A.    Well a -- a massive effort would be something of  
10 the order of activity being carried on by the  
11 National Cancer Institute. I'm saying that somewhere  
12 between nothing and the activity of the National  
13 Cancer Institute there might be an area where certain  
14 types of studies could be made that would shed light  
15 on the question of smoking and disease.

16 Q.    And in 1968 you believed that where the industry  
17 was was on the no-research side of that; right?

18 A.    Well let me say it was on the low side; I didn't  
19 say no research. I think that I expressed my opinion  
20 on several occasions that the industry could do more  
21 to support The Council for Tobacco Research.

22 Q.    Well you weren't advocating supporting The  
23 Council for Tobacco Research in this memorandum.

24 A.    Not in this memorandum.

25 Q.    Okay. And on page six you observed that the

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1 industry's present situation stems from a lack of  
2 knowledge rather than from an overabundance of  
3 knowledge; correct?

4 A. Well I'm --

5 I don't understand what you mean by -- or what  
6 was meant by the "industry situation?" Is that the  
7 term you -- is that --

8 Q. You say all --

9 A. Are you talking about page six?

10 Q. The -- the paragraph that starts, "The cigarette  
11 industry...."

12 A. Yes.

13 Q. Okay. Then you go on to say, "Our present  
14 situation sends from -- stems from lack of knowledge  
15 rather than an overabundance." By "our" --

16 By "our," did you mean Philip Morris or the  
17 cigarette industry?

18 A. The industry.

19 Q. Okay. And you felt in 1968 that the only way --  
20 that -- that the one way in which you could do  
21 yourselves the greatest harm was to fail to learn all  
22 you could about the products and the business, and to  
23 fail to do the research necessary to meet the  
24 technical challenge that the industry now faced;  
25 correct?

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1 A. That's what I said in the memorandum.

2 (Plaintiffs' Exhibit 142 was marked  
3 for identification.)

4 Q. Showing you what's been marked as Exhibit 142,  
5 bearing Bates stamp number 1001609594 through 595,  
6 memorandum dated October 14th, 1969. This is a  
7 memorandum from you to Mr. Millhiser; correct?

8 A. Correct.

9 Q. And you're commenting on a letter written by D.  
10 Irving Zeldman; correct?

11 A. I have no memory of this memorandum. In fact  
12 it's not signed.

13 Q. I'm curious as to why this is the first time  
14 you've observed that your memorandums haven't been  
15 signed.

16 A. Do I --

17 Q. Are they all signed?

18 A. To the best of my knowledge.

19 Q. Are you saying that you didn't write this  
20 memorandum?

21 A. I have no memory of it.

22 Q. Okay. That's different than saying you -- you  
23 mem -- remember that you didn't write it. You  
24 understand what I'm saying? I want to be clear what  
25 you're saying.

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1           You just don't remember one way or the other.

2   A.    I don't remember one way or the other --

3   Q.    Okay.

4   A.    -- whether I did or didn't write it.

5   Q.    Okay.

6   A.    And I don't have any memory regarding Zeldman.

7   Q.    Okay. Give me a second here.

8           And you believed in 1969 that the scientific  
9 expertise of the industry had not been permitted to  
10 make a contribution to the smoking-and-health problem  
11 because of the liability-suit situation; correct?

12           MR. NUNLEY: Corey, can you please direct  
13 me to where --

14           MR. GORDON: Paragraph one.

15           MR. SILBERT: On your -- this is --

16   A.    Are you referring --

17           MR. SILBERT: Well I object to the question  
18 if view of --

19   A.    Are you referring to the Zeldman memorandum?

20   Q.    I am taking language from that and I'm asking if  
21 that was your opinion in 1969.

22   A.    I don't know. I think your question is in a  
23 context which I don't recognize. I'm sorry.

24   Q.    Did you believe in 1969 that the scientific  
25 expertise of the cigarette industry had not been

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1 permitted to make a contribution to the  
2 smoking-and-health situation because of liability  
3 lawsuits?

4 A. Well I don't like to use the term "belief." I  
5 may have thought something like that.

6 Q. Okay.

7 A. But I don't recall the circumstances of -- of  
8 what you're referring to.

9 Q. Did you believe in 1969 that CTR had failed to  
10 involve the best investigators?

11 MR. FALKENSTEIN: Form objection.

12 (Discussion off the stenographic record.)

13 A. I wouldn't describe it as a belief. I had  
14 opinions.

15 Q. Okay. And was it your opinion that CTR had  
16 failed to involve the best investigators?

17 MR. SILBERT: Objection.

18 A. No, I --

19 MR. SILBERT: Excuse me, just --

20 Objection, calls for an opinion.

21 A. I wasn't really qualified to just -- to judge  
22 the quality of the CTR investigators. You're -- I  
23 think you're --

24 You seem to be putting some kind of words in my  
25 mouth here with regard to making a criticism of the

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1 CTR. I -- I was not one to judge the quality of  
2 their scientific advisory board or the qualifications  
3 of the people whom they -- to whom they decided to  
4 give grants. That wasn't my area of expertise. And  
5 I don't think I ever gave an opinion with regard to  
6 that particular question.

7 Q. So do you have any idea how a memo bearing your  
8 name was produced from the files of Philip Morris  
9 that expresses that opinion?

10 A. Which memo are you referring to?

11 Q. Exhibit 142, paragraph five.

12 A. This one with regard to Zeldman?

13 Q. Right.

14 A. I --

15 Well I'm lost on this, I'm sorry, because I have  
16 no memory with regard to Mr. Zeldman's letter or the  
17 context in which this statement was written. It  
18 refers here to items one, two, three, four, five  
19 which may refer also to things in the letter which he  
20 has written. But I have not seen the letter and I'm  
21 not aware of the letter, I have no recollection of  
22 the letter, and what I've given at the end as an  
23 opinion is in a context which I don't recognize.  
24 I'm -- I'm sorry.

25 Q. The fact of the matter is, Dr. Wakeham, by 1970

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1 you had come to have the opinion that much of the  
2 grant work done by CTR had little or no relevance to  
3 smoking and health; correct?

4 A. Did I use the term "much?"

5 Q. I'm -- I'm asking you first as a general  
6 question. If you want to see a document, I'll be  
7 happy to -- to do it. But the general question as  
8 you sit here today: Do you recall that in 1970 you  
9 had -- use some other word than "much." Did you have  
10 concern that -- that some portion of the CTR grant  
11 work had little or no relevance to smoking and  
12 health?

13 MR. NUNLEY: Objection as to form.

14 A. I had expressed that opinion.

15 Q. Okay. And go back to Exhibit 139, if you  
16 would.

17 A. 142, 139.

18 MR. SILBERT: Oh, 139?

19 Q. In the fourth paragraph in this memo from Mr.  
20 Cullman to you, direct your attention to the sentence  
21 where he says, "I would like you to take a more  
22 positive position with respect to the activities of  
23 the CTR and to keep us informed if you feel your  
24 views are not being given due consideration at CTR."  
25 Do you see that?

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1 A. Yes.

2 Q. Do you recall what Mr. Cullman was talking about  
3 when he was asking you to take a more positive  
4 position with respect to the activities of the CTR?

5 MR. SILBERT: I object --

6 MR. NUNLEY: Objection, speculation.

7 MR. SILBERT: Allow me -- I object. I  
8 think the question in effect has been asked and  
9 answered by the witness saying he didn't recall the  
10 memorandum or the conversation.

11 A. I don't recall the background of this particular  
12 question or this particular sentence.

13 Q. Do you ever recall Mr. Cullman having a  
14 conversation with you in which he asked you to take a  
15 more positive position with respect to CTR?

16 A. No.

17 Q. Who was R. N. Saleeby?

18 A. Roger N. Saleeby -- that's with two e's -- was a  
19 person I employed to head up our technical  
20 information services group and who later became  
21 director of development.

22 Q. He was a scientist?

23 A. I'm not certain. It's -- he had some kind of a  
24 scientific engineering background.

25 Q. When he was involved in the technical

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1 information services -- I don't mean to misuse the  
2 phrase --

3 A. Yes.

4 Q. -- if I just did -- one of his responsibilities  
5 was to be aware of what scientific work was being  
6 done with -- done by CTR; is that correct?

7 A. I don't remember that that was an area of his  
8 responsibility.

9 Q. Okay.

10 A. The technical information services was the  
11 group -- sort of an internal service group that --  
12 that bunched together services like the library  
13 function, the patent group, the -- the writing group,  
14 gathering information out -- certain inside --  
15 outside information. In other words, it was an  
16 information service. There was also a planning group  
17 in the technical information service.

18 MR. GORDON: Can I have that marked?

19 (Plaintiffs' Exhibit 143 was  
20 marked for identification.)

21 BY MR. GORDON:

22 Q. Showing you what's been marked as Exhibit  
23 143, --

24 A. Yes.

25 Q. -- bearing Bates stamp number 1000255276 through

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1 278, memorandum dated November 12th, 1971. This is a  
2 memo from Mr. Saleeby to you; correct?

3 A. Yes.

4 Q. And in it he's reviewing the CTR grants --  
5 excuse me, the abstracts of the CTR grants; correct?

6 A. Apparently.

7 Q. Okay. And Mr. Saleeby in this memo advises you  
8 that the most significant reaction he has in reading  
9 these abstracts is, quote, "the feeling of distance  
10 many of them have to the problem of smoking and  
11 health," close quote. Do you see that?

12 A. Yes.

13 Q. Do you remember having a discussion with Mr.  
14 Saleeby at the time of this memo about why he had the  
15 feeling of distance many of the CTR grants had to the  
16 problem of smoking and health?

17 A. No, sir, I do not remember.

18 Q. Direct your attention to page two of the memo,  
19 number two, where Mr. Saleeby says, "The cancer  
20 program (1.1 million dollars), of all things, seems  
21 particularly weak. There is a -- a lot of good work  
22 going on, but the CTR grants are in those areas  
23 safest from the likelihood of coming up with  
24 anything." Do you see that line?

25 A. I see the line.

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1 Q. Did you have any discussion with Mr. Saleeby in  
2 1971 about his -- his perception of weakness in the  
3 CTR cancer program?

4 A. I do not recall a discussion.

5 Q. Number three, Mr. Saleeby --

6 Point number three, Mr. Saleeby states that  
7 there is virtually no epidemiology, and then he  
8 discusses the Framingham study and notes that the  
9 industry claims that statistics don't prove anything  
10 and that studies have defects. Do you see that?

11 A. Yes.

12 Q. And Mr. Saleeby is advocating that CTR do some  
13 epidemiological studies that don't have what -- and  
14 he puts this in quotes -- defects; right?

15 MR. NUNLEY: Objection -- excuse me.

16 Objection as to the characterization of "advocate."

17 A. What's the question?

18 Q. Did you understand this as to be Mr. Saleeby's  
19 suggestion that CTR consider doing some  
20 epidemiological studies that don't have defects?

21 A. I don't recall what he had in mind when he wrote  
22 this. In fact I've completely forgotten the  
23 memorandum in the 26 years.

24 Q. Okay. Look at number five. Do you see where he  
25 refers to Mason Research Institute?

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1 A. I have no memory about Mason Research  
2 Institute.

3 MR. SILBERT: He hasn't -- there's no --  
4 there was no question.

5 Q. Well I was just directing --

6 Do you see that line, the five --

7 A. Yes. I'm sorry.

8 Q. And do you see with Mr. Saleeby says the Mason  
9 Research Institute has 119 million dollars to study  
10 things long since covered?

11 A. Thousand dollars.

12 Q. Thousand dollars. I'm sorry, 119 thousand.

13 MR. SILBERT: My head began to spin.

14 A. I don't remember this at all.

15 Q. Do you remember a discussion with anybody at any  
16 time about CTR giving grants to do research on  
17 subjects that had already been covered?

18 MR. NUNLEY: Objection, vague.

19 A. No, I don't recall discussions.

20 Q. Okay. Page number --

21 Page number three, the very top, the second line  
22 in, where he says, "The cardiovascular problem was  
23 weak, but certainly could be improved in terms of  
24 research challenge?" See that line?

25 A. Yes.

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1 Q. Okay. And the next line is, quote, "Of course,  
2 this is a dangerous area, as we have discussed, as is  
3 the nicotine question." Do you see that?

4 A. Yeah, I see it.

5 Q. What was dangerous about cardiovascular program  
6 that you had discussed with Mr. Saleeby?

7 MR. NUNLEY: Objection, speculation.

8 MR. WEIL: Objection.

9 A. I don't remember anything about it.

10 Q. What was dangerous about the nicotine question?

11 MR. NUNLEY: Same objection.

12 MR. WEIL: Same.

13 A. I don't know what he meant by the word  
14 "dangerous."

15 Q. And as you sit here today, you have no idea what  
16 in 1971 Mr. Saleeby was talking about when he said  
17 that you had discussed that the cardiovascular  
18 program was a dangerous area.

19 MR. FALKENSTEIN: Objection, asked and  
20 answered.

21 A. I don't recall this memorandum or discussions  
22 with Mr. Saleeby.

23 (Plaintiffs' Exhibit 144 was  
24 marked for identification.)

25 BY MR. GORDON:

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1 Q. Showing you Exhibit 144, bearing Bates stamp  
2 number 2022200161 through 163, memorandum dated  
3 December 8, 1970, this is a memo from you to Mr.  
4 Joseph Cullman; correct?

5 A. Yes.

6 Q. Okay. When was the last time you saw this  
7 memo?

8 MR. SILBERT: You may --

9 A. I have no --

10 MR. SILBERT: Excuse me. You may not  
11 include in your answer any observation or review of  
12 the memo that may or may not have occurred in the  
13 presence of your counsel.

14 MR. GORDON: Again, counsel, I'm going to  
15 reserve the right --

16 MR. SILBERT: That's fine.

17 MR. GORDON: -- to challenge that, but move  
18 on.

19 Q. This is a memo where you discuss in general your  
20 views of what kind of CTR program is best for the  
21 industry; correct?

22 MR. NUNLEY: Objection to form.

23 A. Well it's entitled "'Best' Program for C.T.R."  
24 This --

25 I don't remember the circumstances under which

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1 this was written. In fact, I don't remember having  
2 seen this paper in any recent times.

3 Q. When you wrote this memo in 1970, you were under  
4 the assumption that CTR was existing for the good of  
5 the industry; correct?

6 MR. FALKENSTEIN: Objection as to form.

7 Q. Direct your attention to number three.

8 MR. SILBERT: I object to that basic -- on  
9 completeness and the fairness doctrine.

10 A. Well I made the statement we must assume that  
11 CTR exists for the good of the industry. That could  
12 be in many senses.

13 Q. And then you go on to discuss different options  
14 as to how that benefit to the industry could be  
15 achieved; correct?

16 A. Yes.

17 Q. Okay. And you also state that CTR and the  
18 industry have publicly and frequently denied what  
19 others find as truth; correct?

20 MR. FALKENSTEIN: Counsel, can you point us  
21 to where you're --

22 A. Well --

23 MR. GORDON: Number two.

24 MR. SILBERT: Wait.

25 A. Can you refer me to the specific place in the

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1 memorandum?

2 Q. Well let me read all of paragraph two to you.

3 It has been --

4 A. Is it under problem two?

5 Q. No, no, there's several numbers. You're right,

6 I see what you're saying.

7 A. Oh.

8 Q. On the first page.

9 A. Yes.

10 Q. Number two, "It has been stated that CTR is a

11 program to find out, quote, the truth about smoking

12 and health, close quote. What is truth to one is

13 false to another. CTR and the Industry have publicly

14 and frequently denied what others find as, quote,

15 truth, close quote. Let's face it. We are

16 interested in evidence which we believe denies the

17 allegation that cigaret smoking causes disease. If

18 the CTR program is aimed in this direction, it is in

19 effect trying to prove the negative, that cigaret

20 smoking does not cause disease. Both lawyers and

21 scientists will agree that this task is extremely

22 difficult, if not impossible." Do you see that

23 paragraph now?

24 A. Yes, sir.

25 Q. Okay. And to go back to my question, in 1970

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1 you believed that CTR and the industry had been  
2 publicly and frequently denying what others find as,  
3 quote, truth, close quote; right?

4 A. That's what I said.

5 Q. And it was your view in 1970 that Philip Morris  
6 was interested in evidence that denies the allegation  
7 that cigarette smoking causes disease; correct?

8 MR. NUNLEY: Objection as to form.

9 A. No. That I -- we --  
10 The term "we" refers to the industry as a whole.

11 Q. Okay. Thank you for that clarification.

12 You list three possible options for CTR;  
13 correct?

14 MR. SILBERT: Object. The witness has  
15 stated he doesn't recall the memorandum.

16 A. The memorandum indicates that there are three  
17 options.

18 Q. Okay. And the first option would be to aim the  
19 CTR program at contributing to the search for the  
20 causes of disease, especially those diseases alleged  
21 to be caused by smoking; right?

22 A. That is what I have stated as Option A, yes.

23 Q. And that in fact is what CTR supposedly had been  
24 doing all along; right?

25 MR. NUNLEY: Objection as to form.

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1 A. That had been at least part of their charter.

2 Q. Okay. Option B on your suggestion is to use the  
3 CTR program as a means for establishing expert  
4 scientific witnesses who will testify on behalf of  
5 the industry in legislative halls, in litigations, at  
6 scientific meetings, and before the press and the  
7 public; right?

8 A. That's what it states.

9 Q. And Option C would be to aim CTR research at  
10 discovery of information of use and value to the  
11 cigarette industry; right?

12 A. Yes.

13 Q. Okay. Now of these three options, you only  
14 found a problem -- excuse me, you only found problems  
15 with Option A; right?

16 MR. NUNLEY: Objection as to form.

17 A. Well I'm indicating here that there are  
18 different approaches to the overall charter of CTR in  
19 my opinion, and these are not necessarily mutually  
20 exclusive of each other, that they could all be  
21 involved in the same program.

22 Q. And with respect to Option A, which is to aim  
23 the program at contributing to the search for causes  
24 of disease, especially those diseases alleged to be  
25 caused by smoking, you believed in 1970 that the

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1 prospects for a positive benefit were small; right?

2 A. Say that again. I'm sorry.

3 MR. SILBERT: Where does that --

4 Where is that?

5 MR. GORDON: Page two, problem two. "No

6 matter what or how we select, prospects for a

7 positive benefit are small."

8 A. Yes. I said that.

9 Q. Do you recall Dr. Little being assigned to be  
10 scientific director of CTR at any time?

11 A. I have met him, yes.

12 Q. And at -- at some point in time he --

13 A. No. Dr. Little? I met him once or twice when I  
14 first came with Philip Morris, but he retired from  
15 that position sometime. I don't remember when.

16 Q. When --

17 When he retired from that position, there was a  
18 search conducted for a replacement for him; correct?

19 A. I -- I can't answer questions about the  
20 mechanics of CTR. I'm sorry. I don't --

21 I wasn't that much involved and I don't remember  
22 any of the details with regard to it.

23 Q. Isn't it true, Mr. -- Dr. Wakeham, that in 1970  
24 you were very critical of the fact that the search  
25 for Dr. Little's replacement was being conducted by

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1 lawyers without any regard to input from the  
2 scientists?

3 MR. NUNLEY: Objection to form.

4 MR. SILBERT: Objection, conclusory, vague.

5 A. I don't --

6 I don't recall that.

7 Q. Do you recall telling Mr. Felton that in your  
8 meeting with him in 1970?

9 A. No.

10 Q. I'll direct you back to Exhibit 140 if you want  
11 to look at his summary on the top of page two.

12 MR. GROSSI: Before you do that, counsel,  
13 is that the same document that we talked about  
14 earlier?

15 MR. GORDON: Right.

16 MR. GROSSI: Let me just say that I -- I  
17 left the room and called both Mr. Leiter and he in  
18 turn was speaking, as it turns out, with Mr. Sipkins,  
19 and they remember a little bit differently than you  
20 do. First of all they do not remember any court  
21 order by the judge. Their recollection is that the  
22 back-and-forth that you're referring to occurred  
23 between counsel, and that during the back-and-forth  
24 between counsel there was some discussion about using  
25 a document that had not been pre-designated for true

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1 impeachment. I further described the nature of the  
2 questioning of Mr. -- Dr. Wakeham on this particular  
3 document, and it is their view, having just heard,  
4 admittedly, my recitation of it, that you are not  
5 engaged in impeachment. And that's my view, too,  
6 you're not engaged in impeachment, you're trying to  
7 refresh his recollection with a document, which is, I  
8 think as we said, the same thing you've been doing  
9 with all the other documents that were properly  
10 pre-designated.

11 So with that background we will continue to  
12 object to this. And you know, you did it once.  
13 We're into it again. I think there may come the time  
14 when we do need to call the judge on this issue,  
15 because apparently, it is their recollection and only  
16 their recollection that the judge has not amended his  
17 order or ruled in this particular area. Now if  
18 you're --

19 We've asked you previously to provide us with  
20 the order that you say exists. Perhaps you  
21 misrecalled it as well.

22 MR. GORDON: Perhaps, and we'll look into  
23 that, get it clarified before the next deposition.

24 MR. GROSSI: Okay. Well, you know, we can  
25 either continue to allow this to go on and keep

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1 objecting to it, or we can talk to the judge. It is  
2 our view that you obviously have this document, you  
3 obviously were planning on using it, you could have  
4 pre-designated it along with the other documents,  
5 which I believe originally you started with something  
6 like 7,000.

7 MR. GORDON: Well, you know, with -- with  
8 all due respect, and I realize that I've just had an  
9 adverse ruling from Mr. Sipkins, but -- and maybe  
10 I'll appeal to Mr. Schwartzbauer and Mr. Silfen and  
11 see if I can get a different -- different ruling.  
12 But when you say it's obvious that I planned on using  
13 it, I -- I -- I think you lack a certain foundation  
14 to get into what was obvious as to what I planned and  
15 didn't plan to do.

16 Mr. Nunley objected that there were no facts in  
17 evidence in which I was conducting the examination  
18 based on this. Over the lunch break I decided that I  
19 was going to put that into the record so at least it  
20 would be there. So don't -- don't tell me it was  
21 obvious that I was planning on using it all along  
22 because I wasn't planning on using it.

23 MR. GROSSI: Well fine. Then perhaps you  
24 shouldn't. My point is only that this is not  
25 impeachment. You -- you're either trying to

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1 establish new facts or you're trying to refresh a  
2 witness's recollection. You've done neither, you've  
3 neither impeached him or refreshed his recollection  
4 using the document. I -- I am not -- I am not  
5 suggesting that I am well-versed in all of the  
6 Minnesota orders. It was my understanding that  
7 parties were supposed to pre-designated documents  
8 that we were going to use, and you suggested, and my  
9 partner and his colleague have confirmed, that there  
10 is a limited possibility to use true impeachment. I  
11 don't believe you're using impeachment. And since  
12 apparently -- again I'm only saying this with the  
13 knowledge of what the others have provided me with --  
14 apparently the judge has not ruled on this, and if  
15 we're doing something that is not contemplated by the  
16 four corners of this order, I'd just like to get  
17 clarification.

18 MR. GORDON: You said that, the record is  
19 clear, and your objection stands. We'll move on,  
20 please.

21 MR. GROSSI: Well I -- I just want it  
22 understood that we will not accept that type of  
23 approach in the future. This document has already  
24 been used once. If you're going to ask one more  
25 question about it, fine, there's no point in going --

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1                   MR. GORDON: No, no. Counsel, if you  
2 disagree with whether a document I'm using is  
3 impeachment, your remedy is not to call Mr. Sipkins  
4 and get a ruling from him. Your remedy is to either  
5 allow the deposition to go on and preserve your  
6 objection, or, if you think it's important enough, to  
7 call the judge.

8                   MR. GROSSI: Well my -- my problem, sir, is  
9 that you previously represented the judge had already  
10 ruled in this fashion and in this manner. It's my  
11 colleagues' recollection that he has not. So I'm not  
12 sure if we called the judge at this point that it  
13 wouldn't do any good; he'd have to be advised of all  
14 premises.

15                  MR. GORDON: It's your choice. But  
16 you're -- you're not entitled to direct the witness  
17 not to answer a question.

18                  MR. GROSSI: I haven't done that, sir. My  
19 question to you is simply: Do you -- do you still  
20 insist that the judge did rule on this? I need to  
21 understand that.

22                  MR. GORDON: My memory may be from error.  
23 Maybe the stipulated order was drafted and never  
24 submitted or -- or not yet signed. I don't know.

25                  MR. GROSSI: Well I think that's a --

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1 that's a problem.

2 MR. GORDON: We'll -- we'll have to double  
3 check on that.

4 MR. GROSSI: Well let me just say: This is  
5 Mr. Nunley's deposition to defend. I only put this  
6 on the record because I went out so as not to waste  
7 any time calling a break.

8 MR. GORDON: It's on the record several  
9 times. Let's go back -- let's move on.

10 BY MR. GORDON:

11 Q. Did you have a chance in all that to read that  
12 one paragraph on -- or the two paragraphs on page two  
13 of Exhibit 140?

14 A. I'm sorry. I wasn't diligent in reading the  
15 paragraph.

16 Q. I -- I understand. Just --

17 MR. SILBERT: I'm sorry. Which paragraph  
18 did you want him to read?

19 MR. GORDON: Paragraphs one and two.

20 THE WITNESS: At the top of the page?

21 MR. GORDON: On page two of Exhibit 140.

22 MR. NUNLEY: Do you have 140?

23 MR. SANDMAN: Yes.

24 A. Well I think I said before that I have no  
25 recollection --

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1 MR. SILBERT: Just read it.

2 THE WITNESS: Excuse me.

3 MR. SILBERT: He asked you to read it, so  
4 read it.

5 THE WITNESS: I'll read it. Sorry.

6 MR. SILBERT: Uh-huh. That's okay.

7 THE WITNESS: I've read it.

8 Q. Okay. Does it --

9 Do you recall the conversation with Mr. Felton  
10 about this?

11 A. No.

12 Q. And do you recall any of the -- the underlying  
13 facts, the underlying substance that's contained in  
14 this -- in those two paragraphs?

15 A. No.

16 Q. Okay.

17 MR. GORDON: Mark an exhibit here.

18 (Plaintiffs' Exhibit 145 was marked  
19 for identification.)

20 MR. NUNLEY: Corey, are you --

21 This is a Felton document are you saying? I  
22 don't see any --

23 Are you saying that it's a Felton document?

24 MR. GORDON: Must be from the 4B -- 4A --  
25 the 4B.

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1           It's not on there? Oh, it's -- yeah, DGF at the  
2 bottom of the page at 5971.

3           MR. FALKENSTEIN: I'm sorry. Did you  
4 distribute documents? Did you distribute copies of  
5 145?

6           MR. GORDON: No, I didn't make extra  
7 copies; just made the copies that we had all agreed  
8 on.

9 BY MR. GORDON:

10 Q. Showing you exhibit 2022244451 through 53 --

11           THE REPORTER: It's Exhibit 145.

12 Q. -- Exhibit 145, a memo dated April 7, 1970.

13 It's from you to Mr. Goldsmith; correct?

14 A. Correct.

15 Q. In 1970, INBIFO, the research laboratory in --  
16 in Cologne, Germany, was available for acquisition;  
17 correct?

18 A. Yes.

19           MR. NUNLEY: Objection, speculation.

20 Q. And you were recommending that Philip Morris buy  
21 INBIFO; right?

22 A. Apparently. I -- I wrote so in the memorandum.

23 Q. Well Philip Morris ultimately did buy INBIFO;  
24 correct?

25 A. Yes.

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- 1 Q. And in 1970 you were recommending that one  
2 reason for buying INBIFO was that Philip Morris  
3 already had a major program there; right?
- 4 A. We had a program.
- 5 Q. What was that program?
- 6 A. It was a program in the area of inhalation  
7 toxicology -- toxicology with cigarette smoke.
- 8 Q. What kind of studies were going on?
- 9 A. I don't know the details of the study.
- 10 Q. Who was in charge of that?
- 11 A. Dr. Hackenberg was the director of the  
12 institute, and the program was in our department of  
13 research under Dr. Osdene.
- 14 Q. So Dr. Osdene would be the person most  
15 knowledgeable about the INBIFO program?
- 16 A. Yes.
- 17 Q. Okay. Another rationale that you offered in  
18 this 1970 memo for buying INBIFO was that it was in  
19 a -- was that it was in a locale where we might do  
20 some of the things that we were reluctant to do in  
21 this country. See that?
- 22 A. Yes.
- 23 Q. What were you reluctant to do in the United  
24 States?
- 25 A. I don't recall the context of the word

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1 "reluctant" or the -- the reason for the reluctance.

2 Q. Okay. Did Philip Morris have a company policy  
3 with respect to selling cigarettes to children under  
4 the age of 18?

5 A. I don't know anything about marketing policy.

6 Q. How about research aimed at marketing to  
7 children under the age of 18?

8 MR. NUNLEY: Objection. You mean --

9 A. I don't -- I don't know anything about marketing  
10 to -- research.

11 Q. So as far as you were concerned when you were  
12 director of research and development and when you  
13 were vice-president of research and development, it  
14 was okay for Philip Morris to be conducting research  
15 in to what worked most effectively for marketing of  
16 cigarettes to children under the age of 18.

17 MR. SILBERT: I object.

18 MR. NUNLEY: Objection.

19 MR. WEIL: Objection.

20 MR. SILBERT: I object to that, assumes  
21 facts not in evidence and it is conclusory and  
22 argumentative.

23 A. I don't know what you're referring to. I'm  
24 sorry.

25 Q. Did you have any policy when you were head of

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1 the research and development with respect to research  
2 directed towards marketing cigarettes to children  
3 under the age of 18?

4 A. No. We had two groups. We had a group in New  
5 York identified as marketing research, marketing  
6 research, that had to do with how to market  
7 cigarettes. It had to do with the marketing side.

8 Q. And you had nothing to do with that.

9 A. We had nothing to do with that.

10 We had another group which we had at Richmond  
11 which we called market research where we were trying  
12 to predict trends and -- and look at the overall  
13 marketplace in terms of what was available in the  
14 market.

15 Q. And what did you call that group?

16 A. Market research, in contrast with marketing  
17 research.

18 Q. And was there any policy with respect to whether  
19 market research could examine sales among children?

20 A. No. General -- well I --

21 There was no policy.

22 Q. So --

23 A. There were -- there were no directives from --  
24 as far as I know from -- from my office relating to  
25 what this group should or should not look at.

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1 Q. So as far as you were concerned when you were  
2 head of research and development, it would have been  
3 okay for the market research group to look into sales  
4 of cigarettes to children under the age of 18.

5 MR. NUNLEY: Objection,  
6 mischaracterization.

7 MR. WEIL: Objection.

8 MR. SILBERT: Objection, vague.

9 A. I don't recall that it was advocated or  
10 prohibited to the group. I don't know that much  
11 about the activity of the group. We were more  
12 interested in trends of cigarette -- what types of  
13 cigarettes were doing well in the marketplace, what  
14 types of cigarettes were not doing well, with the  
15 idea in mind that we would develop cigarettes that  
16 would capture a larger portion of the market.

17 Q. And were you interested in capturing a larger  
18 portion of the under-18 market?

19 A. I have no -- no recollection that we ever  
20 discussed that or had any activities in that  
21 direction.

22 Q. And my question is: Do you have any  
23 recollection that you had any reason not to have any  
24 such discussions?

25 MR. SILBERT: Oh, I --

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1 MR. WEIL: Objection.

2 MR. SILBERT: That kind of negative, I --

3 Well, I find it vague and unclear.

4 Q. Was there --

5 MR. GORDON: I'll withdraw the question.

6 MR. SILBERT: I'm sorry -- all right.

7 Q. Was there any company policy that precluded you  
8 from trying to do research to figure out what kind of  
9 cigarette products would be most effectively marketed  
10 to children under the age of 18?

11 MR. NUNLEY: Objection, foundation.

12 A. As far as I know there was no policy.

13 Q. Who was Myron Johnston?

14 A. He was on my staff in the technical information  
15 service group.

16 (Plaintiffs' Exhibit 146 was marked

17 for identification.)

18 BY MR. GORDON:

19 Q. Showing you what's been marked as Exhibit 146,  
20 bearing Bates stamp number 1000306237 through 239,  
21 memorandum dated May 23rd, 1969, this would be a memo  
22 from Myron Johnston to Robert Seligman; correct?

23 A. Correct.

24 Q. And that's your initials up at the top?

25 A. Yes.

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- 1 Q. Show --
- 2 Signifying that you read this?
- 3 A. Yes. In 1969.
- 4 Q. Right.
- 5 And you're carbon copied down at the bottom;
- 6 right?
- 7 A. Yes.
- 8 Well this is the copy which was sent me.
- 9 Q. Right. And the very last page of this exhibit
- 10 shows your received stamp here.
- 11 A. Oh yeah, okay.
- 12 Q. So this -- this is a copy of -- of your copy of
- 13 this memo; right?
- 14 A. Yes.
- 15 Q. Okay. And on page two of this memo, Mr. -- or
- 16 strike that.
- 17 In 1969 was Dr. Seligman reporting to you?
- 18 A. Yes.
- 19 Q. Okay. Now I direct your attention to page two
- 20 of Exhibit 146, and you'll see that the age -- that
- 21 the age portion of the graph goes along the -- the
- 22 bottom of this graph and starts at age 15 years. Do
- 23 you see that?
- 24 A. Yes.
- 25 Q. And the highest peak for Marl -- this is

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1 Marlboro sales, is between 15 and 17 years; correct?

2 A. Well that's where the line is. It's the high at  
3 that point, yes.

4 Q. And beyond that it continues -- it -- it goes  
5 down.

6 A. Yes.

7 Q. Okay. Now back in 1969, do you recall when you  
8 read this having any concerns about the fact that  
9 Myron Johnston was tracking Marlboro sales to  
10 children under the age of 18?

11 MR. NUNLEY: Objection as to the  
12 characterization.

13 A. I don't recall the memorandum, I haven't seen it  
14 since 1969, and I don't remember my reaction to it.

15 Q. Do you recall ever telling Mr. Seligman or Mr.  
16 Johnston, either in person, in a phone call, or in a  
17 memo, to stop looking at market trends of children  
18 under the age of 18?

19 A. No.

20 MR. WEIL: Objection.

21 MR. SILBERT: When you get to an  
22 appropriate point, could we take a five-minute break,  
23 please?

24 MR. GORDON: Sure. Let me just move along  
25 because I have some quick stuff here.

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1 MR. SILBERT: Uh-huh.

2 (Plaintiffs' Exhibit 147 was marked  
3 for identification.)

4 BY MR. GORDON:

5 Q. Showing you Exhibit -- Exhibit 147, bearing  
6 Bates stamp number 1000719422 through 423, a letter  
7 dated January 4, 1971. That's a letter from you to a  
8 Dr. Paul Lazarsfeld; correct?

9 A. Yes.

10 Q. And in this letter you are approving Dr.  
11 Lazarsfeld doing research for Philip Morris; correct?

12 A. Yes.

13 Q. And this research Dr. Lazarsfeld, who -- well  
14 strike that.

15 Dr. Lazarsfeld is a sociologist; is that  
16 correct?

17 A. Yes.

18 Q. And the study that you are approving in 1971 is  
19 to conduct 200 interviews to investigate the  
20 motivational conflicts engendered by the ongoing  
21 discussion about cigarette smoking; correct?

22 A. I don't know. I have no memory of this -- of  
23 the details of this project.

24 Q. Well you see there in the first paragraph you --  
25 it -- you're saying --

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1 A. Yes.

2 Q. -- it's your understanding that he will conduct  
3 200 interviews at points along the East Coast?

4 A. Yes. I read that.

5 Q. And -- and you say that the main purpose is to  
6 investigate the motivational conflicts engendered by  
7 the ongoing discussion about cigarette smoking. See  
8 that?

9 A. That's what the memo -- the letter says, yes.

10 Q. And you are telling him to draw his subjects for  
11 those 200 interviews from five groups; right?

12 A. That's described in the first paragraph, yeah.

13 Q. And one of those groups is adolescents; right?

14 A. That's what it says.

15 Q. Okay.

16 (Plaintiffs' Exhibit 148 was

17 marked for identification.)

18 BY MR. GORDON:

19 Q. Showing you Exhibit 148, bearing Bates stamp  
20 number 1003285497 through 502, memorandum dated May  
21 21st, 1975 from Myron Johnston to Dr. Seligman.  
22 Carbon copy individuals are listed on page six.

23 MR. SILBERT: Was there a page with a  
24 received stamp?

25 MR. GORDON: Not in this production, no.

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1 MR. SILBERT: Okay.

2 Q. I want to direct your attention to the bottom  
3 paragraph on the first page under "Demographics."  
4 The first line there, "It has been well established  
5 by the National Tracking Study and other studies that  
6 Marlboro has for many years had its highest market  
7 penetration among younger smokers."

8 Do you know what the National Tracking Study is?

9 A. No.

10 Q. Was that -- do --

11 Do you have any idea if that was a Philip Morris  
12 thing or -- or something external?

13 A. No.

14 Q. Okay. The next line of Mr. Johnston's memo is,  
15 "Most of these studies have been restricted to  
16 people aged 18 and over, but my own data, which  
17 includes younger teenagers, shows even higher  
18 Marlboro market penetration among 15 to 17  
19 year-olds." Do you see that?

20 A. I see that.

21 Q. Do you recall ever instructing Mr. Johnston,  
22 either directly or through Dr. Seligman, that he  
23 should not be keeping his own data about markets --  
24 Marlboro market penetration among 15- to  
25 17-year-olds?

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1 A. No.

2 Q. Next line on this document, Exhibit 148, "The  
3 teenage years are also important because those are  
4 the years during which most smokers begin to smoke,  
5 the years in which initial brand selections are made,  
6 and the period in the life-cycle in which conformity  
7 to peer-group norm -- norms is greatest." See that?

8 A. Yes.

9 Q. Do you remember having any conversation with Mr.  
10 Johnston or Dr. Seligman in which you expressed  
11 disagreement with that assertion?

12 A. No. I remember no conversations about this.

13 MR. GORDON: One more and then we'll take a  
14 break.

15 (Plaintiffs' Exhibit 149 was marked  
16 for identification.)

17 (Discussion between the witness  
18 and his counsel.)

19 BY MR. GORDON:

20 Q. Showing you Exhibit 149, bearing Bates stamp  
21 number 1003285479 through 483, memo dated August 17,  
22 1970, this is a memo from Dr. Dunn to you; correct?

23 A. Yes.

24 Q. Who was Dr. Dunn?

25 A. Dr. Dunn was a psychologist on the staff.

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1 Q. Reporting to you?

2 A. I'm not sure. At the beginning Dr. Dunn worked  
3 closely with me, but I think by 1970 he was part of  
4 the research function under Dr. Osdene.

5 Q. And Dr. Osdene reported to you.

6 A. Yes.

7 Q. Okay. I direct your attention to the bottom of  
8 this first page under 1.a), and I will quote, "Horn's  
9 recent survey data of teenagers revealing a higher  
10 percentage of smokers among 12 to 18 year olds in the  
11 USA than ever before recorded...." See that?

12 A. I see it.

13 Q. Do you know what Dr. Dunn was referring to when  
14 he talks about "Horn's recent survey data?"

15 A. No.

16 Q. Do you remember having a discussion with Dr.  
17 Dunn at any time about any concerns you had about  
18 having survey data of 12- to 18-year-old cigarette  
19 smokers?

20 A. No.

21 MR. GORDON: Okay. If you want to take a  
22 break now, this would be fine.

23 MR. SILBERT: Good. Thank you.

24 THE REPORTER: Off the record, please.

25 (Recess taken.)

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1                   (Plaintiffs' Exhibit 150 was marked  
2                   for identification.)

3 BY MR. GORDON:

4 Q.   Dr. Wakeham, I want to shift our focus to  
5 another topic area, that of nicotine.

6       In 1959 you were -- tell me again, you were a  
7 technical assistant; is that correct?

8 A.   Right.

9 Q.   That was before you became director of research  
10 and development, or --

11       1959 is when you became director; right?

12       MR. NUNLEY: Objection to form.

13 A.   Well yes, October.

14 Q.   October of 1959 is when you became director.

15 Okay. Well this Exhibit 150 that I'm showing you  
16 bearing Bates stamp number 1005039423 through 424 is  
17 a September 22nd, 1959 memo from you to Robert Roper;  
18 correct?

19 A.   Yes.

20       (Discussion off the stenographic record.)

21 Q.   So Exhibit 150 was written just before you  
22 became director of research, correct?

23 A.   Yes.

24 Q.   Okay. Now at the time you wrote this memo,  
25 Exhibit 150, you believed that one of the main

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1 reasons people smoked was to experience the  
2 physiological effects of nicotine on the human  
3 system; correct?

4 MR. NUNLEY: Objection to form.

5 MR. WEIL: Objection.

6 Q. Page two. Second paragraph.

7 A. I expressed such an opinion, yes.

8 Q. Okay. And in this memo you were advocating the  
9 development -- well strike that.

10 You noted in this memo that there had been a  
11 trend to reducing both tar and nicotine over the last  
12 few years; right?

13 MR. SILBERT: Where is that?

14 MR. GORDON: Same paragraph.

15 MR. SILBERT: Same. Thank you.

16 A. Yes.

17 Q. Okay. And you were suggesting a different  
18 approach here, by creating a cigarette with  
19 relatively high nicotine and low tar; correct?

20 A. Yes, I said that.

21 Q. Okay.

22 A. I'd like to remind you that this was in 1959.  
23 I'd been with the company less than a year. I had,  
24 let's say, very naive ideas with regard to the  
25 cigarette industry.

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1 MR. GORDON: Okay.

2 (Plaintiffs' Exhibit 151 was marked

3 for identification.)

4 BY MR. GORDON:

5 Q. Showing you Exhibit 151, bearing Bates stamp

6 number 100861953, memo dated March 24, 1961, this is

7 a memo from you to Mr. Cullman; correct?

8 A. Correct.

9 Q. And you were research director at this point;

10 correct?

11 A. Yes.

12 Q. Okay. And you use the phrase "hi-fi cigarette"

13 in the -- in the middle of the middle paragraph

14 there. Do you see that?

15 A. Yes, I -- I read that.

16 Q. "Hi-fi" refers to what?

17 A. I'm not sure what I had in mind with "hi-fi."

18 Q. You don't recall that in the cigarette industry

19 "hi-fi" referred to high filtration?

20 A. No, I don't recall it.

21 Q. Okay. Was there a word -- a phrase that you

22 used for high-filter cigarettes?

23 A. I have no memory about the terminology or lingo,

24 but I think in the context of this memorandum,

25 "hi-fi" referred to high filtration.

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1 Q. Okay. And in the last line of that second  
2 paragraph you say, "As we know all too often the  
3 smoker who switches to a hi-fi cigarette winds up  
4 smoking more units in order to provide himself with  
5 the same delivery which he had before." Do you see  
6 that line?

7 A. I see the line, yes.

8 Q. Okay. And in 1961 you didn't believe that the  
9 smoking pattern had changed much even with cancer  
10 scares in filter cigarettes; right?

11 A. I said that.

12 Q. Okay.

13 (Plaintiffs' Exhibit 152 was marked  
14 for identification.)

15 BY MR. GORDON:

16 Q. Showing you Exhibit 152, document bearing Bates  
17 stamp number 1000277423 through 7447, document  
18 entitled "TOBACCO AND HEALTH-R&D APPROACH,  
19 Presentation to R&D Committee by Dr. H. Wakeham at  
20 meeting held in New York office on November 15,  
21 1961." What was the R&D committee?

22 A. I'm not sure at this point.

23 Q. Okay. I take it you don't remember the specific  
24 presentation.

25 A. No.

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1 Q. I'm going to direct your attention to the page  
2 that bears the Bate -- Bates stamp number 1000277441.

3 A. I've read the page.

4 Q. Okay. And in 1961 you were director of  
5 research; correct?

6 A. Yes.

7 Q. Okay. In this document you said, quote, "Even  
8 though nicotine is believed essential to cigarette  
9 acceptability, a reduction in level may be desirable  
10 for medical reasons." Correct?

11 A. I said that.

12 Q. And that refers to the cardiovascular problems  
13 associated with nicotine; right?

14 A. For whatever reason.

15 Q. Well what were the reasons in 1961?

16 A. I don't know what I had in mind under the term  
17 "medical reasons." Certainly would include  
18 cardiovascular.

19 Q. And in 1961 you believed that nicotine was  
20 essential to cigarette acceptability; right?

21 A. Yes.

22 Q. Okay.

23 (Plaintiffs' Exhibit 153 was marked  
24 for identification.)

25 BY MR. GORDON:

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1 Q. Showing you Exhibit 153, bearing Bates stamp  
2 number 2022241517 through 1518, memorandum dated  
3 February 5, 1962, this appears to be a memo from Hugh  
4 Cullman to you; correct?

5 A. Yes.

6 Q. And this memo is a discussion of Mr. Cullman's  
7 analysis of a report of yours that shows that R. J.  
8 Reynolds' cigarettes had low -- significantly lower  
9 total particulate matter for a given nicotine level  
10 compared to Philip Morris cigarettes; right?

11 A. That's what he said.

12 Q. And he's analyzing how Reynolds might have  
13 accomplished this high nicotine-to-TPM ratio;  
14 correct?

15 MR. NUNLEY: Objection to form.

16 A. He's -- he's speculating how it might have  
17 happened.

18 Q. Right. And on page two he asks you to look into  
19 the issue and -- and give your comments to him on how  
20 Reynolds could be achieving a high nicotine-to-TPM  
21 ratio.

22 MR. NUNLEY: Objection, mischaracterization  
23 of the document.

24 Q. Right?

25 A. Yes.

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1                   (Plaintiffs' Exhibit 154 was marked  
2                   for identification.)

3 BY MR. GORDON:

4 Q.    Showing you Exhibit 154, bearing Bates number  
5 1001885988, memo dated February 8, 1962 from H. H.  
6 Blackmore to Dr. Bavley with a carbon copy to Dr.  
7 Seligman and to Dr. Wakeham. This is a memo that,  
8 among other things, draws a conclusion --  
9 (sneezing) excuse me -- that R. J. Reynolds is adding  
10 alkaloids if they are not using a larger percentage  
11 of burley tobacco in their products. See that number  
12 five?

13 A.    Yes.

14 Q.    Okay. Adding alkaloids refers to adding  
15 nicotine; right?

16                   MR. SILBERT: Objection, calls for this  
17 witness to conclude -- to speculate.

18 A.    I don't know what he meant by adding alkaloids.

19 Q.    What other --

20                   What other alkaloids are there in cigarette  
21 smoke besides nicotine -- or excuse me, tobacco  
22 besides nicotine?

23 A.    Nornicotine. There may be others. I'm not that  
24 familiar with the chemistry of the leaf itself.

25 Q.    And what's the ratio of nicotine to nornicotine

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1 in cigarette -- in tobacco?

2 A. What --

3 I don't recall that.

4 Q. Nicotine is more than 95 percent of all  
5 alkaloids in tobacco; isn't it?

6 A. I don't know.

7 MR. NUNLEY: Which type of tobacco?

8 A. I don't know.

9 Q. Well did you ever find out how it was that  
10 Reynolds was achieving a higher nicotine-to-TPM  
11 ratio?

12 A. No, I have no -- no memory regarding this. I do  
13 not recall it.

14 (Plaintiffs' Exhibit 155 was marked  
15 for identification.)

16 BY MR. GORDON:

17 Q. Showing you Exhibit 155, a document bearing  
18 Bates stamp number 1001600537 through 538 --

19 MR. GORDON: What number was it?

20 THE REPORTER: 155.

21 Q. A memo dated June 7, 1965 from John Staley to J.  
22 Y. Mason, and carbon copy to Wakeham, Seligman and  
23 Dawson. This copy would have your received stamp on  
24 it and your initials in the upper right-hand corner;  
25 correct?

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1 A. Yes.

2 Q. And this is a discussion of the prices of buying  
3 raw nicotine; correct?

4 A. That's described in the memo.

5 Q. Okay.

6 MR. NUNLEY: Corey, I take issue of your  
7 characterization of buying -- calls for buying  
8 nicotine.

9 Q. In this memo Mr. Staley computes the raw-  
10 material cost per pound of nicotine from a variety of  
11 sources; right?

12 A. Well he has a column labeled "Dollars Per Pound  
13 of Nicotine."

14 Q. And in the middle paragraph on the first page he  
15 says, "As you know, we had previously set a limit of  
16 two dollars per pound of nicotine as a maximum raw  
17 material cost." See that?

18 A. I haven't --

19 Yes, I see it.

20 Q. You have no memory of this document?

21 A. I have no memory of the document.

22 Q. You have no memory of Philip Morris making a  
23 search to --

24 A. No.

25 Q. -- find -- find out -- find a source of raw

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1 nicotine.

2 A. No.

3 Q. There came a point in time when Philip Morris  
4 developed technology called ART, or Alkaloid Reduced  
5 Tobacco; correct?

6 A. I don't recall that.

7 Q. You don't recall Philip Morris develop --  
8 developing a process for extracting nicotine from  
9 tobacco?

10 MR. NUNLEY: Timeframe, Corey?

11 A. We --

12 MR. GORDON: Any time.

13 A. Yes, we had a program at one -- during one  
14 period when we were doing experiments extracting  
15 nicotine from tobacco, but I don't recall any of the  
16 details.

17 Q. Okay.

18 (Plaintiffs' Exhibit 156 was marked  
19 for identification.)

20 BY MR. GORDON:

21 Q. Showing you Exhibit 156, document bearing Bates  
22 stamp number 1003289921 through 22, memo dated  
23 February 19, 1969, this is a memo from Bill Dunn to  
24 you; correct?

25 A. It would seem so.

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- 1 Q. And Dr. Dunn was a psychologist; right?
- 2 A. Yes.
- 3 Q. Okay. In 1969 you were vice-president of
- 4 research and development?
- 5 A. Yes.
- 6 Q. So Dr. Dunn would have been answering to
- 7 somebody in between you and him; is that right?
- 8 A. I'm not sure. But his office was next to mine,
- 9 so we had occasional conversations with each other.
- 10 Q. In 1969 did you consider cigarette smoke to be a
- 11 drug?
- 12 A. No, not in the strict sense of a drug as defined
- 13 by the Food and Drug Administration.
- 14 Q. Okay. And I direct your attention to paragraph
- 15 three where in Dr. Dunn says, "I would be more
- 16 cautious in using the pharmic-medical model -- do we
- 17 really want to tout cigarette smoke as a drug? It
- 18 is, of course, but there are dangerous F.D.A.
- 19 implications to having such conceptualization go
- 20 beyond these walls." See that?
- 21 A. Yes.
- 22 Q. Do you remember ever having any discussion with
- 23 Dr. Dunn about this particular assertion at the time
- 24 he gave you this memo?
- 25 A. No, I don't recall the -- the context of it.

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1 Q. Do you recall sending Dr. Dunn any memo in  
2 response, disagreeing that cigarette smoke was a  
3 drug?

4 A. No.

5 Q. There was a study done in the mid-'60s called  
6 Sex One. Do you remember that?

7 A. The -- the name rings a bell with me, but I  
8 don't recall the nature of the study.

9 Q. So you don't remember what S-e-x stood for?

10 A. No.

11 Q. Okay. Do you recall butt-length study where  
12 butt -- cigarette butts were collected and analyzed  
13 for residual --

14 A. Yes.

15 Q. -- products?

16 A. I -- I remember that was a technique which was  
17 employed to get some measure of how much the smoker  
18 was getting in terms of delivery.

19 Q. Okay. As you sit here today, do you recall Sex  
20 One being a study using that technique?

21 A. No. I don't relate the two.

22 Q. Okay.

23 (Plaintiffs' Exhibit 157 was marked  
24 for identification.)

25 BY MR. GORDON:

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1 Q. Showing you Exhibit 157, bearing Bates stamp  
2 number 1000273741 through 771, document dated  
3 November 26, 1969 titled "Smoker Psychology Research,  
4 By: Dr. H. Wakeham." And in general, this was a  
5 presentation given by you to the Philip Morris board  
6 of directors about the psychology research program  
7 that was going on at Philip Morris at that time;  
8 correct?

9 A. Yes.

10 Q. Okay. Direct your attention to page -- it's  
11 page seven of the document, Bates stamp number 3748.

12 A. Four eight?

13 Q. Three seven four eight.

14 And I guess starting with the discussion of  
15 Slide 10 and going down for a couple paragraphs, this  
16 is a description of some of the research that was  
17 being done by the psychology group in the Philip  
18 Morris R&D department; right?

19 A. Yes. Yes.

20 Q. And this particular section I've drawn your  
21 attention to refers to a study where smokers were  
22 switched between high-delivery and low-delivery  
23 cigarettes; right?

24 MR. NUNLEY: Objection as to form.

25 A. Well I have to read it to refresh my memory

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1 about this.

2 I think the description is probably fairly

3 accurate of the experiment which was performed.

4 Q. Okay. And you found that smokers who were

5 changed to stronger cigarettes from weaker cigarettes

6 smoked less than they had of the weaker cigarettes,

7 and those who were changed to weaker cigarettes from

8 the stronger cigarettes smoked more; right?

9 A. In this experiment.

10 Q. Right.

11 And this experiment was one of the things that

12 allowed you to conclude that a smoker tends to seek

13 his own level of intake; right?

14 A. That could be a conclusion from the study, yes.

15 Q. And that's one of the conclusions that --

16 A. Yes.

17 Q. -- you presented to the board of directors in

18 1969; right?

19 A. Yes.

20 Q. Okay. And you also concluded that smokers are

21 remarkably insensitive to the taste nuances in smoke;

22 right?

23 Number one.

24 A. That was apparently something I said, yes.

25 Q. And you concluded that differences in smoke

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1 take -- of smoke intake among smokers are much  
2 greater than is suggested by tar numbers and  
3 estimates of how many cigarettes are smoked each day?

4 A. Yes.

5 Q. And you also concluded that a smoker's intake is  
6 determined by the smoker himself, not by the  
7 manufacturer of the cigarettes.

8 A. Yes.

9 Q. Okay. Now on the next page you were exploring,  
10 for the benefit of the board of directors, the  
11 questions of why does one begin to smoke and why does  
12 one continue to smoke. Right? Middle of the page.

13 A. Yes, I -- I read it.

14 Q. And in response to the first question, why does  
15 one begin to smoke, you state, "The 16 to 20-year old  
16 begins smoking for psychosocial reasons. The act of  
17 smoking is symbolic; it signifies adulthood, he  
18 smokes to enhance his image in the eyes of his  
19 peers." Do you see that?

20 A. I see it.

21 Q. Okay. And with respect to the second part, you  
22 told -- told the board of directors that "Some other  
23 motive force takes over to make smoking rewarding in  
24 its own right;" correct?

25 A. I said that, yes.

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1 Q. And you told the board of directors in 1969 that  
2 the cigarette will preempt food in times of scarcity  
3 on the smoker's priority list; right?

4 MR. NUNLEY: Well I object.

5 A. I --

6 MR. SILBERT: I'm sorry, can I --

7 MR. NUNLEY: Mischaracterization of what it  
8 says, Corey. His language is "will even preempt  
9 food."

10 A. I explained that in the next sentence.

11 Q. Right. And you -- you --

12 Well you explained that at the end of World War  
13 II, one could buy wine, women and song with a  
14 cigarette; right?

15 A. Right.

16 Q. Cigarettes were a -- a -- a form of currency --

17 A. Yes.

18 Q. -- in occupied Europe; right?

19 A. They were.

20 THE REPORTER: We have to change tape. Off  
21 the record, please:

22 (Discussion off the record.)

23 BY MR. GORDON:

24 Q. So in 1969 you were telling the board of  
25 directors that the -- one motive that takes over

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1 after adolescent -- well strike that.

2 In 1969 you told the board of directors, "Long  
3 after adolescent preoccupation with self-image has  
4 subsided, cigarette will even preempt food in times  
5 of scarcity on the smoker's priority list."

6 A. I wrote that, yes.

7 Q. And the purpose of the smoker psychology group  
8 was to try and figure out why; correct?

9 A. Among other things.

10 Q. Okay. And you listed, starting on page nine,  
11 cigarette smoke effects; right?

12 A. There is a list, yes.

13 Q. Includes increased pulse rate; correct?

14 A. Yes.

15 Q. Increased cardiac output and coronary flow;  
16 correct?

17 A. Yes.

18 Q. Lowered skin temperature in hands and feet;  
19 correct?

20 A. Lower --

21 Q. Lowered skin temperature in hands and feet.

22 A. Oh, down here at the bottom.

23 Yes.

24 Q. Reduction in knee jerk?

25 A. Apparently.

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1 Q. Is that -- and that --

2 That refers to the reflex when a doctor hits a  
3 hammer on --

4 A. Yes. I think so.

5 Q. Okay. Smoke --

6 Smoke causes arousal center in the brain stem to  
7 be excited; correct?

8 A. Yes.

9 Q. And increases the blood sugar level; correct?

10 A. Yes.

11 Q. And on page nine you conclude that the ultimate  
12 explanation for the perpetuated cigarette habit  
13 resides -- resides in the pharmacological effect of  
14 smoke upon the body of the smoker, the effect being  
15 most rewarding to the individual under stress.

16 MR. SILBERT: Page nine? Excuse me.

17 Q. Excuse me, page 11.

18 MR. SILBERT: Page 11.

19 Q. Let me read that again, middle of the page, page  
20 11. In 1969 when you were vice-president of research  
21 and development, you told the board -- Philip Morris  
22 board of directors that you were of the conviction  
23 that the ultimate explanation for the perpetuated  
24 cigarette habit resides in the pharmacological effect  
25 of smoke upon the body of the smoker, the effect

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1 being most rewarding to the individual under stress;

2 correct?

3 A. I'm looking for the quotation on page 11 that

4 you just read. Is it --

5 Yes. All right.

6 Q. That's what you told the board of directors.

7 A. Yes.

8 Q. Okay. And in 1969 you were -- you had been

9 working for Philip Morris for over 11 years; right?

10 A. Approximately.

11 Q. You'd been vice-president for research and

12 development for seven years?

13 A. Yes.

14 Q. You no longer considered yourself naive about

15 cigarettes; did you?

16 A. No, not --

17 Maybe not as naive as I had been before.

18 MR. GORDON: This would be a logical place

19 to stop.

20 MR. NUNLEY: Let me just state before we go

21 off, Corey, I want to put you on notice that if you

22 attempt to use any of the questions that you've

23 directed to page eight, I'm going to object at trial,

24 because I think it was misleading to direct him to

25 that center portion of the page without directing him

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1 to the top two paragraphs. It's clearly taken out of  
2 context, and I don't think you gave him sufficient  
3 time to review it. So I would object to you using  
4 that at trial.

5 MR. GORDON: Well you, of course, have an  
6 opportunity to conduct your own examination and you  
7 can clear up anything that you think is misleading or  
8 out of context.

9 MR. NUNLEY: I will still move to strike it  
10 at trial.

11 MR. GORDON: I also want to note that there  
12 was a stipulated order relating to pre-designation of  
13 deposition exhibits wherein the court held, "It is  
14 hereby odered that deposition exhibits to be used for  
15 genuine impeachment shall not be subject to the  
16 predesignation requirement of paragraph 14 of this  
17 Court's order of March 20th, 1996." It was signed on  
18 June 7th by Peter Sipkins, Dorsey & Whitney, and it  
19 was entered by the court on June 11th, 1996.

20 And I understand, counsel, that you're new to  
21 the Minnesota litigation and might not be familiar  
22 with these details, but I want to note for the record  
23 that I'm -- that I'm greatly disturbed that when you  
24 took the time to call Mr. Sipkins in his office, he  
25 didn't bother to find this out and check and remember

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1 the fact that he himself had executed this order and  
2 the judge had entered it almost a full year ago, and  
3 we -- we spent the time waiting -- the wasted time  
4 going over this in the deposition. And I might point  
5 out again, it's not your fault, counsel, but this is  
6 the second time that Philip Morris has erroneously  
7 asserted that some -- that something existed that --  
8 or didn't exist, and counsel was contacted back in  
9 Minnesota and they didn't bother to check and they  
10 didn't bother to convey the right information. And  
11 we -- I just want to put Philip Morris on notice that  
12 we're kind of tired of this, and we would hope that  
13 in the future before assertions are made on the  
14 record, that people check the facts.

15 MR. GROSSI: Let me respond to that,  
16 because what I think I said was clear but I want it  
17 to be very clear. The record will reflect that we  
18 asked for the basis of the view that impeachment  
19 materials need not be pre-designated, and Philip  
20 Morris counsel in the room all indicated that they  
21 were perfectly happy to take whatever representation  
22 you made in that regard and whatever information you  
23 could provide about the court order. You indicated  
24 that you believed there was a court order but you  
25 could not provide us with the reference. And we

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1 didn't stop the deposition. And we went and I called  
2 Mr. Leiter, who is my contact. It happened that Mr.  
3 Leiter was on the phone with Mr. Sipkins at the time,  
4 I described the situation to Mr. Leiter. Mr. Leiter  
5 took a moment. A few minutes later he came back and  
6 told me that it was his recollection and Mr. Sipkins'  
7 recollection that it had not been reduced to an order  
8 but rather it was an agreement of counsel. I think  
9 the record is also clear that what they said was that  
10 they agreed with your position that impeachment  
11 materials could be used. Their recollection was that  
12 the way it was expressed -- and they thought it was  
13 in correspondence with counsel, which I suspect it  
14 was before this order was entered, they weren't sure  
15 about whether an order had been entered -- the way  
16 they recalled it was some stress on genuine  
17 impeachment or true impeachment. I think those were  
18 the words I probably used when I came back.

19       It now appears that in the time that we've been  
20 in your office -- and I think the record should  
21 reflect that we're taking this deposition for your  
22 convenience in the Washington office of your law firm  
23 rather than, for example, in my law firm where I  
24 could have checked these materials for myself back  
25 there. But that happens. You have to take a

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1 deposition someplace, and sometimes you play home and  
2 sometimes you play away. You apparently decided to  
3 play home this time, and that's fine. But the fact  
4 is that Mr. Sipkins' recollection of the facts was  
5 correct. The matter has to be limited to the phrase  
6 you just used, I believe, was "genuine impeachment."  
7 I don't have a copy of the order with me. I don't  
8 consider what you did today to be genuine impeachment  
9 and we won't permit it tomorrow. You did not impeach  
10 the witness in any way, shape or form, you did not  
11 cause him to contradict himself, you did not show him  
12 a document that he had written. Instead you showed  
13 him a document written by, apparently, as I  
14 understand it, someone else at some other company in  
15 an apparent attempt to refresh his recollection,  
16 which is, of course, something that is done in  
17 depositions. But in this particular case, as I  
18 understand the rules, and I think you've agreed with  
19 this, if you were merely trying to use a document to  
20 refresh your recollection rather than for, quote,  
21 genuine impeachment, unquote, it is supposed to be  
22 pre-designated. That's the only issue.

23 MR. GORDON: Well I must take exception to  
24 what you said. You said that Peter Sipkins'  
25 recollection was correct. In fact, sir, it was

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1 wrong, because you told -- you represented to us on  
2 the record that Mr. Sipkins' recollection was that  
3 the ordered not been entered. In fact, the order was  
4 entered, so Mr. Sipkins' recollection once again, was  
5 wrong. And that's the problem I'm drawing your  
6 attention to.

7 MR. GROSSI: Well --

8 MR. GORDON: Mr. Sipkins, when you were  
9 talking to him, could have checked.

10 I agree with you. You're not in the your  
11 office; you don't have the resources to check. Mr.  
12 Sipkins could have and should have instead of  
13 representing to you that he didn't recall that the --  
14 that the order was entered and we've wasted all the  
15 time that we -- that we did.

16 As far as you're saying you're not going to  
17 permit, I'm sorry, sir, you don't have that right.

18 MR. GROSSI: Philip Morris will object.

19 MR. GORDON: You can object.

20 MR. GROSSI: Should you --

21 No. Philip Morris will object and Philip Morris  
22 will call the judge.

23 MR. GORDON: That -- that you can do as  
24 well.

25 MR. GROSSI: If tomorrow --

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1 MR. GORDON: Well --

2 MR. GROSSI: I just want to put you on  
3 notice --

4 MR. GORDON: That's fine.

5 MR. GROSSI: -- because you still have the  
6 opportunity, for example, to give us documents you  
7 intend to use. But if you, tomorrow, use documents  
8 that were not on your pre-designation list and you  
9 use them for any purpose other than, quote, genuine  
10 impeachment, unquote, then we will seek guidance from  
11 the court.

12 MR. GORDON: That's fine. That you can  
13 do.

14 MR. GROSSI: Okay. That's all I wanted to  
15 say.

16 MR. GORDON: Yeah. You -- you -- you said  
17 you would not permit, and my point was --

18 MR. GROSSI: Well we won't --

19 MR. GORDON: -- you're not going to rule on  
20 your own objection.

21 (Discussion off the stenographic record.)

22 MR. GROSSI: Of course not. The point is  
23 that we will -- we will ask the witness for a break  
24 and we'll call the court.

25 By the way, I'll ask again: If you do have

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1 documents that you think you might be using tomorrow,  
2 we'd be perfectly happy to take them tonight,  
3 assuming we're not talking about hundreds or  
4 thousands as you designated over this weekend. But  
5 it's your deposition. That's fine.

6 MR. GORDON: We're going to resume at 9:00  
7 tomorrow?

8 MR. NUNLEY: Corey, what was the other  
9 incidence of this that you -- you mentioned? Was it  
10 something that I was involved with?

11 MR. GORDON: No, not at all. I wasn't even  
12 involved in it. It happened in a -- one of the other  
13 depositions, and I don't remember the details.

14 MR. GROSSI: Let me also state for the  
15 record -- and Dr. Wakeham, I don't think you have to  
16 stay for this. But we should state for the record,  
17 and this has been the subject of correspondence with  
18 counsel, we do not consider the pre-designation of  
19 the documents that were designated to have been  
20 proper in this case. The record will reflect that on  
21 five days before the deposition, which was the  
22 appropriate day, counsel designated approximately  
23 7,000 different documents. When we protested that  
24 that was an absurd number to expect people to try to  
25 analyze in five days and hardly in good faith in

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1 pre-designation of what would be used in a two-day  
2 deposition, we were provided on Tuesday or over the  
3 weekend, I guess, Saturday, and then it arrived on  
4 Tuesday, a list of 1700 documents. When we protested  
5 that, within a matter of only hours counsel was able  
6 to cull that down to 275, which is a more manageable  
7 number, and I understand it's more akin with the  
8 kinds of numbers that have been delivered by other  
9 counsel in this case five days before the deposition.

10 We requested that we would have the five days  
11 starting from, I guess it was, Tuesday night, when we  
12 received the 275. I guess that's about four percent  
13 list of what was originally pre-designated. Counsel  
14 refused to give us that time -- counsel refused to  
15 give us copies of the documents even though he  
16 apparently had them in a box, and so we had to spend  
17 all the time since then trying to get our arms around  
18 those 275 documents, and obviously have not had any  
19 type of opportunity to show them to the -- to the  
20 witness, with a result that we have had from time to  
21 time to stop to take breaks to -- to let the witness  
22 look at the documents.

23 We have agreed to proceed. But as I think Mr.  
24 Leiter made clear in a letter that he sent to you  
25 that I -- I believe I have a copy of, we are in a

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1 sense playing this one under protest, and we want it  
2 well understood that we do not believe that the order  
3 was complied with in this case.

4 I understand that counsel wanted to go forward,  
5 and having arranged the deposition, but I -- we don't  
6 think that was proper. I only put that on the record  
7 since this question of pre-designation has come up,  
8 that I didn't want my silence on that point to  
9 indicate that we were satisfied or believed that  
10 there had been appropriate compliance with the order  
11 with respect to the 275 that had been designated.

12 Again, the objection is not to the number so  
13 much as it is to the fact that we had, I guess, more  
14 like 36 hours rather than the five days specified by  
15 the court's order. That's all.

16 MR. GORDON: My recollection of the Case  
17 Management Order calls for only one counsel speaking  
18 on behalf of a defendant. I have tolerated more than  
19 one counsel speaking on behalf of Philip Morris  
20 today, but given that there are five of you here  
21 and -- and plus two more for Dr. Wakeham, I'm -- I'm  
22 feeling a little bit ganged up on. And I want to put  
23 you on notice that tomorrow I want to avail myself of  
24 the protections of that order. And you can decide  
25 among you who's going to be the one Philip Morris

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1 attorney speaking on the record, but I -- I -- I  
2 guess I don't want to have this verbal free-for-all  
3 among Philip Morris counsel tomorrow.

4 MR. GROSSI: Mr. Gordon, I think the record  
5 will reflect that during the course of the deposition  
6 we are -- we are obviously not in the middle of a  
7 deposition now, we're talking about housekeeping  
8 matters that our firm is directly involved in, but I  
9 believe the record will be clear that with the  
10 exception of me asking for a Bates number, a  
11 clarification which you said you appreciated because  
12 you thought it was good procedure, with the exception  
13 of asking for a Bates number I don't believe that any  
14 of the other Philip Morris counsel other than Mr.  
15 Nunley have made a statement on the record.

16 We will go. Thank you.

17 THE REPORTER: Off the record, please.

18 (Deposition recessed at 3:44 o'clock p.m.)

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## 1 C E R T I F I C A T E

2 I, Richard G. Stirewalt, hereby certify  
3 that I am qualified as a verbatim shorthand reporter;  
4 that I took in stenographic shorthand the testimony  
5 of HELMUT R. R. WAKEHAM at the time and place  
6 aforesaid; and that the foregoing transcript  
7 consisting of pages 1 through 203 is a true and  
8 correct, full and complete transcription of said  
9 shorthand notes, to the best of my ability.

10 Dated at Washington, D.C., this 29th day of  
11 May, 1997.

12

13

14

15 RICHARD G. STIREWALT

16 Registered Professional Reporter

17 Notary Public

18

19

20

21

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23

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25

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1 C E R T I F I C A T E

2 I, HELMUT R. R. WAKEHAM, the deponent,  
3 hereby certify that I have read the foregoing  
4 transcript consisting of pages 1 through 203, and  
5 that said transcript is a true and correct, full and  
6 complete transcription of my deposition except:

7

8

9

10

11

12

13

14

15 HELMUT R. R. WAKEHAM

16 Deponent

17

18 Sworn and subscribed to before me this day  
19 of , 1997.

20

21

22

23 Notary Public

24

25 My commission expires .

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